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THE  
UNREPEALED GENERAL ACTS  
OF  
THE GOVERNOR GENERAL IN COUNCIL.

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GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

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THE  
UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL :

WITH

CHRONOLOGICAL TABLE, AN APPENDIX CONTAINING ACTS I TO V  
OF 1909, AN INDEX TO THE VOLUME AND A GENERAL INDEX  
TO THE WHOLE COLLECTION.

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From 1904 to 1908, both inclusive.

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## PREFACE.

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THIS, the sixth volume of the fourth edition of the General Acts, has been compiled on the same lines as the five preceding volumes. An index to the volume and a General Index to the six volumes are appended.

The Acts included in this volume are printed as modified up to the 31st March, 1909.

References to notifications regarding the extension of the Civil Procedure Code, 1908, to certain districts are printed in the first appendix to this volume.

Acts I—V of 1909 are printed in the second appendix.

S. C. BANERJEE,  
*Legal Assistant, Legislative Department  
of the Government of India.*

CALCUTTA;  
*The 31st March 1909.*



## LIST OF ABBREVIATIONS USED.

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Aj. Code . . . .	For Ajmere Code.
Bal. Code . . . .	„ Baluchistan Code.
Ben. Code . . . .	„ Bengal Code.
Bom. Code . . . .	„ Bombay Code.
Bur. Code . . . .	„ Burma Code.
C. P. Code . . . .	„ Central Provinces Code.
E. B. and A. Code . . . .	„ Eastern Bengal and Assam Code.
Mad. Code . . . .	„ Madras Code.
P. and N.-W. Code . . . .	„ Punjab and North-West Code.
U. P. Code . . . .	„ United Provinces Code.
Coll. Stat. . . . .	„ Collection of Statutes relating to India.
Gen. R. and O. . . . .	„ General Statutory Rules and Orders.
Ben. R. and O. . . . .	„ Bengal List of Local Statutory Rules and Orders.
Bom. R. and O. . . . .	„ Bombay List of Local Rules and Orders.
C. P. R. and O. . . . .	„ Central Provinces List of Local Rules and Orders.
E. B. and A. R. and O. . . . .	„ Eastern Bengal and Assam List of Local Rules and Orders.
Mad. R. and O. . . . .	„ Madras List of Local Rules and Orders.
Punj. R. and O. . . . .	„ Punjab List of Local Rules and Orders.
U. P. R. and O. . . . .	„ United Provinces List of Local Rules and Orders.
Bur. R. M. . . . .	„ Burma Rules Manual.
Brit. Enact., N. S. (Mad. and My.) . . . .	„ British Enactments in force in Native States (Southern India, Madras and Mysore) Volume.
„ „ „ (Hyd.) . . . .	„ British Enactments in force in Native States (Southern India, Hyderabad) Volume.
„ „ „ (N. I.) . . . .	„ British Enactments in force in Native States (Northern India) Volume.
„ „ „ (W. I.) . . . .	„ British Enactments in force in Native States (Western India) Volume.
„ „ „ (C. I.) . . . .	„ British Enactments in force in Native States (Central India) Volume.
„ „ „ (Raj.) . . . .	„ British Enactments in force in Native States (Rajputana) Volume.



*Chronological Table.*

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.  
1904-1908 \*

*N.B.*—The references to pages in column 5 are to pages of this volume.

1	2	3	4	5
Year.	No	Short title or subject.	Whether repealed or otherwise affected by legislation	Where published.
1904	I	The Poisons Act, 1904	..	p. 1.
	II	The Central Provinces Courts Act, 1904.	....	C P Code.
	III	The Local Authorities Loan Act, 1904.	Amended, Act VIII of 1908	p. 6
	IV	The North-West Border Military Police Act, 1904.	....	Local: published separately.
	V	The Indian Official Secrets (Amendment) Act, 1904.	....	p. 8.
	VI	The Transfer of Property (Amendment) Act, 1904.	....	p. 11.
	VII	The Ancient Monuments Preservation Act, 1904.	....	p. 13.
	VIII	The Indian Universities Act, 1904.	....	p. 25
	IX	The Madras Coast Lights Act, 1904	....	p. 43
	X	The Co-operative Credit Societies Act, 1904	....	p. 50.
	XI	Act to revive and continue section 8 B of the Indian Tariff Act, 1894.	....	p. 61.

\*.Acts I—V of 1909 will be found printed in Appendix II.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL.  
1904-1908—*contd.*

1	2	3	4	5
Year	No	Short title or subject.	Whether repealed or otherwise affected by legislation	Where published
1904	XIII	The Indian Articles of War (Amendment) Act, 1904.	....	p. 62
	XIV	Act to supplement certain provisions of the City of Bombay Improvement Act, 1898.	....	B o m b a y Code
	XV	The Indian Stamp (Amendment) Act, 1904	....	p. 63
	XVI	The Sea Customs (Amendment) Act, 1904.	....	p. 66.
1905	I	The Local Authorities Loan (Amendment) Act, 1905	....	p. 67.
	II	The Indian Universities (Validation) Act, 1905	.. .	p. 68.
	III	The Indian Paper Currency Act, 1905	Amended, Act II of 1909 .	p. 71.
	IV	The Indian Railway Board Act, 1905	....	p. 79.
	V	The Indian Articles of War (Amendment) Act, 1905.	....	p. 80.
	VI	The Court-fees (Amendment) Act, 1905.	....	p. 81.
	VII	The Bengal and Assam Laws Act, 1905.	....	Bengal Code, E. B. and Assam Code.
1906	I	The Indian Tariff (Amendment) Act, 1906.	....	p. 82.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL,  
1904-1908—*contd.*

1	2	3	4	5
Year.	No.	Short title or subject.	Whether repealed or otherwise affected by legislation	Where published.
1906	II	The Sindh Incumbered Estates (Amendment) Act, 1906.	....	Bombay C o d e,
	III	The Indian Coinage Act, 1906.	....	p. 85.
	IV	The Presidency Small Cause Courts Act, 1906	Rep. in part, Act IX of 1908.	p. 92.
	V	The Indian Stamp (Amendment) Act, 1906.	....	p. 94.
	VI	The Indian Merchant Shipping (Amendment) Act, 1906.	....	p. 96.
	VII	The Excise (Amendment) Act, 1906.	....	Local: published separately.
	VIII	The Land Improvement and Agriculturists' Loans (Amendment) Act, 1906	....	p. 97.
1907	I	The Presidency Banks (Amendment) Act, 1907.	....	p. 98.
	II	The Central Provinces Boiler Inspection Act, 1907.	....	Local: published separately.
	III	The Provincial Insolvency Act, 1907.	....	p. 103.
	IV	The Repealing and Amending (Rates and Cesses) Act, 1907.	....	Local: published separately.
	V	The Local Authorities Loan (Amendment) Act, 1907.	....	p. 125.



UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL  
1904-1908—*contd.*

1	2	3	4	5
Year	No	Short title or subject	Whether repealed or otherwise affected by legislation	Where published
1917	VI	The Prevention of Seditious Meetings Act, 1907.	...	p. 126.
1908	I	The Legal Practitioners (Amendment) Act, 1908.	...	p. 129.
	II	The Indian Tariff (Amendment) Act, 1908.	....	p. 130.
	III	The Indian Trusts (Amendment) Act, 1908.	....	p. 131.
	IV	The Coroners (Amendment) Act, 1908.	....	p. 132. Except ss. 2 to 12 which are of local application
	V	The Code of Civil Procedure, 1908.	....	p. 141.
	VI	The Explosive Substances Act, 1908.	....	p. 469.
	VII	The Newspapers (Incitements to Offences) Act, 1908.	....	p. 470.
	VIII	The Local Authorities Loan (Amendment) Act, 1908.	....	p. 473.
	LX	The Indian Limitation Act, 1908.	....	p. 476.
	X	The Indian Salt Duties Act, 1908.	....	p. 511.
	XI	The Assam Labour and Emigration (Amendment) Act, 1908.	....	Local: published separately.

UNREPEALED ACTS OF THE GOVERNOR GENERAL IN COUNCIL,  
1904-1908—*concl'd*

1	2	3	4	5
Year.	No.	Short title or subject	Whether repealed or otherwise affected by the legislation	Where published
1908	XIII	The Central Provinces Financial Commissioner's Act, 1908	...	Local : published separately.
	XIV	The Indian Criminal Law (Amendment) Act, 1908.	....	p. 512. Extends at present only to Bengal and E. B. and Assam.
	XV	The Indian Ports Act, 1908	....	p. 519.
	XVI	The Indian Registration Act, 1908.	....	p. 560.
	XVII	The Indian Emigration Act, 1908.	....	p. 593
	XVIII	The Indian Merchant Shipping (Amendment) Act, 1908.	....	p. 627.



THE  
UNREPEALED GENERAL ACTS  
OF  
THE GOVERNOR GENERAL IN COUNCIL,  
1904-1908.

ACT No. I OF 1904.<sup>1</sup>

[22nd January 1904.]

An Act to provide for the regulation of the possession and sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic generally.

WHEREAS it is expedient to make provision for regulating the possession and sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic throughout the whole of British India ; It is hereby enacted as follows :—

1. (1) This Act may be called the Poisons Act, 1904 ; and
- (2) It extends to the whole of British India.

Short title  
and extent.

*Poisons generally.*

2. (1) Subject to the control of the Governor General in Council, the Local Government may, by rule,<sup>2</sup> regulate within the limits of any municipality or cantonment the possession for sale and the sale, whether wholesale or by retail, of any specified poison.

Power to  
regulate  
possession  
for sale and  
sale of any  
poison in  
certain areas.

<sup>1</sup> For Statement of Objects and Reasons see Gazette of India, 1903, Pt. V, p. 457 ; for Report of Select Committee, see *ibid.*, 1904, Pt. V, p. 1 and for Proceedings in Council, see *ibid.*, 1903, Pt. VI, p. 151 ; *ibid.*, 1904, Pt. VI, p. 8.

The Act has been declared to be in force in the Santhal Parganas by notification under s. 3 of the Santhal Parganas Settlement Regulation, 1872 (III of 1872), Ben. Code ; see Calcutta Gazette, 1905, Pt. I, p. 878.

<sup>2</sup> For rules issued under this section in—

- (1) Bengal, see Calcutta Gazette, 1908, Pt. I, p. 283 ;
- (2) Bombay, see Bombay Govt. Gazette, 1909, Pt. I, p. 60 ;
- (3) Burma, see Burma Gazette, 1909, Pt. I, p. 171 ;
- (4) Central Provinces, see C. P. Gazette, 1907, Pt. I, p. 692 ;
- (5) Coorg, see Coorg District Gazette, 1907, Pt. I, p. 149 ;
- (6) Madras, see Fort St. George Gazette, 1907, Pt. I, p. 1235, and *ibid.*, 1908, Pt. I, 582 ;
- (7) N.-W. F. Province, see Gazette, of India, 1907, Pt. II, p. 1814 ;
- (8) Punjab, see Punjab Gazette, 1907, Pt. I, p. 890 ;
- (9) United Provinces, see U. P. Gazette, 1907 Pt. I, p. 744.

*(White Arsenic.)*

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), rules made thereunder may provide for, amongst other matters,—

(a) the grant of licenses to possess any specified poison for sale, wholesale or by retail, and the fixing of the fee (if any) to be charged for such licenses ;

(b) the classes of persons to whom alone such licenses may be granted ;

(c) the classes of persons to whom alone any such poison may be sold ;

(d) the maximum quantity of any such poison which may be sold to any one person ;

(e) the maintenance by vendors of any such poison of registers of sales, the particulars to be entered in such registers, and the inspection of the same ;

(f) the safe custody of such poisons and the labelling of the vessels, packages or coverings in which any such poison is sold or possessed for sale ; and

(g) the inspection and examination of any such poison when possessed for sale by any such vendor.

(3) Any substance specified as a poison in a rule made under this section shall be deemed to be a poison for the purposes of this Act.

*White Arsenic.*

Power to prohibit importation into British India of white arsenic except under license.

Power to regulate possession for sale and sale of white arsenic throughout province.

3. The Governor General in Council may, by notification in the Gazette of India, prohibit, except under and in accordance with the conditions of a license, the importation of white arsenic into British India, and may, by rule, regulate the grant of licenses and prescribe the conditions to be imposed thereby under this section.

4. (1) Subject to the control of the Governor General in Council, the Local Government may, by rule,<sup>1</sup> regulate within the whole or any part of the territories under its administration the possession for sale and the sale whether wholesale or by retail, of white arsenic.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), rules made thereunder may provide, amongst other matters, for all or any of the matters specified in section 2, sub-section (2).

<sup>1</sup>For rules under this section for—

(1) Bengal, *see* Calcutta Gazette, 1908, Pt. I, p. 1326 ;

(2) Bombay, *see* Bom. Govt. Gazette, 1909, Pt. I, p. 62 ;

(3) Coorg, *see* Coorg District Gazette, 1907, Pt. I, p. 151 ;

(4) Madras *see* Mad. R. and O. ; Fort St. George Gazette, 1907, Pt. I, p. 1236 ;

(5) N. W. F. Province, *see* Gazette of India, 1907, Pt. II, p. 1815 ;

(6) United Provinces, *see* U. P. Gazette, 1907, Pt. I, p. 745.

*(White Arsenic—Other Poisons.—Penalties and Procedure.)*

(3) Rules made under sub-section (1) may further provide that no person shall sell any powdered white arsenic unless the same is, before the sale thereof, mixed with soot, indigo or Prussian blue in the proportion of half an ounce of soot, indigo or Prussian blue at least to one pound of the white arsenic, and so in proportion for any greater or less quantity:

Provided that, where such arsenic is stated by the purchaser to be required for some purpose for which such admixture would, according to the representation of the purchaser, render it unfit, such arsenic may be sold, without such admixture, in a quantity of not less than ten pounds at any one time.

5. (1) The Local Government, with the previous sanction of the Governor General in Council, may further, by rule, regulate the possession of white arsenic in any local area in which murder by poisoning with that drug or the offence of mischief by poisoning cattle therewith appears to it to be of such frequent occurrence as to render restrictions on the possession thereof desirable.

Power to regulate possession of white arsenic in certain tracts.

(2) In making any rule under sub-section (1), the Local Government may direct that any breach thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, together with confiscation of the white arsenic in respect of which the breach has been committed, and of the vessels, packages or coverings in which the same is found.

*Other Poisons.*

6. (1) The Governor General in Council may, by notification<sup>1</sup> in the Gazette of India, apply to any specified poison other than white arsenic all or any of the provisions of this Act relating exclusively to white arsenic.

Power to apply Act to other poisons.

(2) Any substance specified as a poison in a notification issued under sub-section (1) shall be deemed to be a poison for the purposes of this Act.

*Penalties and Procedure.*

7. (1) Whoever,—

- (a) commits a breach of any rule made under section 2 or section 4, or
- (b) imports into British India, without a license, white arsenic the importation of which is for the time being restricted under section 3, or
- (c) breaks any condition of a license for the importation of white arsenic granted to him under section 3,

Penalty for unlawful importation, etc.

shall be punishable,—

- (i) on a first conviction, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and

<sup>1</sup>For such a notification see Gazette of India, 1908, Pt. I, p. 426.

*(Penalties and Procedure—Savings.)*

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any poison in respect of which an offence has been committed under this section, together with the vessels, packages or coverings in which the same is found, and, in the case of any offence mentioned in clause (b) or clause (c) of sub-section (1), any animals and conveyances used in carrying it, shall be liable to confiscation

Power to  
issue search-  
warrant.

8. (1) The District Magistrate, the Sub-divisional Magistrate, and, in a Presidency-town, the Commissioner of Police, respectively, may issue a warrant for the search of any place in which he has reason to believe or to suspect that any poison is possessed or sold in contravention of this Act or any rule thereunder or that any poison liable to confiscation under this Act is kept or concealed.

(2) The person to whom the warrant is directed may enter and search the place in accordance therewith, and the provisions of the Code of Criminal Procedure, 1898<sup>1</sup>, relating to search-warrants shall, as far as may be, be deemed to apply to the execution of the warrant.

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Rules.

9. (1) In addition to any other power to make rules hereinbefore conferred, the Governor General in Council, or, subject to the control of the Governor General in Council, the Local Government, may make rules generally to carry out the purposes and objects of this Act.

(2) Every power to make rules conferred by this Act shall be subject to the condition of the rules being made after previous publication.

(3) All rules made by the Governor General in Council or by the Local Government under this Act shall be published in the Gazette of India, or the local official Gazette, as the case may be, and on such publication shall have effect as if enacted in this Act.

*Savings.*

Savings.

10. (1) Nothing in this Act or in any license granted or rule made thereunder shall extend to or interfere with anything done in good faith in the exercise of his profession or business as such—

(a) by a medical or veterinary practitioner, or

(b) by a chemist or druggist duly qualified to act as such under the law for the time being in force in the United Kingdom, or

(c) by a chemist, druggist or compounder dispensing or compounding in compliance with the prescription of a medical or veterinary practitioner, or

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<sup>1</sup>General Acts, Vol. V.

*(Savings—Repeals.)*

(1) subject to any rules for the time being in force under section 5, by tanner or hide-merchant.

(2) Notwithstanding anything hereinbefore contained, the Local Government may, in its discretion, by general or special order, declare that all or any of the provisions of this Act shall not be deemed to apply to any article, or class of articles, of commerce specified in such order, or to any poison, or class of poisons used for any purpose so specified, and may, from time to time, alter or vary any such declaration.

(3) The authority on which any power to make rules under this Act is conferred may, by general or special order, exempt any person or class of persons, either generally or in respect of any poison or poisons specified in the order, from the operation of any such rules.

*Repeals.*

11. From such date as the Local Government may, by notification in the local official Gazette,<sup>1</sup> fix in this behalf, the following enactments shall be repealed in the territories for the time being administered by the Governor of Bombay in Council and the Lieutenant-Governor of the United Provinces of Agra and Oudh respectively, namely :—

Repeal of  
certain local  
enactments  
from notified  
dates.

Bombay Act VIII of 1866 (*an Act to regulate and restrict the sale of poisons in the Bombay Presidency*).

The North-Western Provinces and Oudh Municipalities Act, 1900 (*North-Western Provinces and Oudh Act I of 1900*), section 128, clause (i).

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<sup>1</sup> As to Bombay, the 12th January 1909, *see* Bom. Govt. Gazette, 1909, Pt. I, p. 80.



ACT No. III OF 1904<sup>1</sup>.

[20th February 1904.]

An Act to make further provision regarding the borrowing powers of certain local authorities.

WHEREAS it is expedient to make further provision regarding the borrowing powers of certain local authorities ; It is hereby enacted as follows :—

Short title  
and extent.

1. (1) This Act may be called the Local Authorities Loan Act, 1904.

(2) It applies only to the local authorities specified in the schedule, and any other local authority to which the Governor-General in Council may, by notification in the Gazette of India, extend its provisions.

Issue of  
short-term  
bills.

2 Notwithstanding anything in any other enactment for the time being in force, but subject always to the provisions of section 25 of the Indian Paper Currency Act, 1882,<sup>2</sup> a local authority may, with the previous sanction of the Governor-General in Council, borrow money by means of the issue of bills<sup>3</sup> [or promissory notes payable] within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under any law for the time being in force :

XX of 1882.

Provided that the amount of the bills<sup>3</sup> [or promissory notes] which may be so issued, shall not exceed, when the amount of the other moneys for the time being borrowed by such local authority is taken into account, the total amount which such local authority is empowered by law to borrow.

Power of  
borrowing  
to repay  
previous  
loan.

3. Notwithstanding anything in any other enactment for the time being in force, a local authority may, with the previous sanction of the Governor-General in Council, borrow money in any manner authorized by law for the purpose of repaying money previously borrowed in accordance with law :

Provided that nothing in this section shall be deemed to empower a local authority to fix a period for the repayment of any money borrowed thereunder which, when the period fixed for the repayment of the money previously borrowed is taken into account, will exceed the maximum period fixed for the repayment of a loan by or under any enactment for the time being in force.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1903, Pt. V, p. 515; for Report of Select Committee see *ibid.*, 1904, Pt. V, p. 19, and for proceedings in council. see *ibid.*, 1903, Pt. VI, p. 169, *ibid.*, 1904, Pt. VI, pp. 9, and 20.

<sup>2</sup> See now s. 24 of the Indian Paper Currency Act, 1905 (III of 1905), *infra*.

<sup>3</sup> The words "bills or promissory notes payable" were submitted for the words "bills repayable" and the words "or promissory notes" were inserted by s 2 of the the Local Authorities Loan (Amendment) Act, 1408 (VVIII of 1908), *infra*.

4. The Governor-General in Council may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this Act.

Regulation of  
conditions of  
borrowing  
and repaying  
money under  
Act.

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### THE SCHEDULE.

(See section 1.)

The Corporation of Calcutta.

The Commissioners for the Port of Calcutta.

The Municipal Corporation of the City of Bombay.

The Trustees of the Port of Bombay.

The Municipal Commissioners for the City of Madras.

The Trustees of the Harbour of Madras.

The Municipal Committee of Rangoon.

The Commissioners for the Port of Rangoon.

The Municipality of Karachi.

The Trustees of the Port of Karachi.

The Trustees for the Improvement of the City of Bombay.

ACT NO. V OF 1904.<sup>2</sup>

[4th March 1904.]

## An Act to amend the Indian Official Secrets Act, 1889.

WHEREAS it is expedient to amend the <sup>2</sup> Indian Official Secrets Act, 1889 ; XV of  
It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Official Secrets (Amendment) Act, 1904.

Addition of  
definition  
of " civil  
affairs " to  
section 2,  
Act XV,  
1889.

2. In section 2 of the Indian Official Secrets Act, 1889, the word " and ", XV of  
where it occurs between clauses (5) and (6), shall be omitted, and after the  
latter clause the following shall be added, namely :—

" and

(7) " civil affairs " means affairs—

(a) affecting the relations of His Majesty's Government or of the  
Governor-General in Council with any foreign State, or

(b) affecting the relations of the Governor-General in Council with  
any Native State in India, or relating to the public debt or the  
fiscal arrangements of the Government of India or any other  
important matters of State, where these affairs are of such a  
confidential nature that the public interest would suffer by their  
disclosure."

Amendment  
of section 3,  
Act XV,  
1889.

3. In section 3 of the said Act, the following alterations shall be made,  
namely :—

(a) in sub-section (1), sub-head (a), clause (i), the word " office " shall  
be omitted ;

(b) in clause (ii) of the same sub-section and sub-head,—

(i) after the word " aforesaid ", the words " or in any office belonging  
to His Majesty " shall be inserted,

(ii) after the words " obtains ", " obtain " and " takes ", the words  
" or attempts to obtain ", " or any copy of any such document,  
sketch, plan or model ", and " or attempts to take ", respec-  
tively, shall be inserted, and

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1903, Pt. V, p. 464, for Report of Select Committee, see *ibid.*, 1904, Pt. V, p. 13, and for proceedings in Council, see *ibid.*, 1903, Pt. VI, pp. 156, 188, 198, *ibid.*, 1904, Pt. VI, pp. 14 and 27.

The Act has been declared in force in the Santhal Parganas by notification under section 3 of the Santhal Parganas Settlement Regulation, 1872 (III of 1872), Ben. Code, see Calcutta Gazette, 1905, Pt. I, p. 878.

<sup>2</sup> General Acts, Vol. IV.

(iii) for the word " anything " the words " any naval, military or civil affair of His Majesty " shall be substituted,

(c) in sub-head (c) of the same sub-section and in sub-section (2), for the words " naval or military " the words " naval, military or civil " shall be substituted,

(d) after sub-section (1), the following shall be inserted as sub-section (2), and the present sub-sections (2) and (3) shall be renumbered sub-sections (3) and (4) :—

"(2) Where a person commits any act specified in clauses (i), (ii) and (iii) of sub-section (1), sub-head (a), without lawful authority or permission (the proof of which authority or permission shall be upon him), the Court may presume that he has committed such act for the purpose of wrongfully obtaining information "; and

(e) for the words " in the interest of the State " wherever they occur the words " in the public interest " shall be substituted.

4. In section 4, sub-section (1), of the said Act, the words " in the interest of the State or otherwise " shall be omitted.

Amendment of section 4, Act XV, 1889.

5. For section 5 of the said Act the following section shall be substituted, namely :—

Substitution of sections for section 5, Act XV, 1889.

V of 1893. " 5. (1) Notwithstanding anything in the <sup>1</sup> Code of Criminal Procedure, 1898, every offence against this Act committed in relation to any fortress, arsenal, factory, dockyard, camp or ship belonging to His Majesty, or in relation to the naval or military affairs of His Majesty, shall, for the purposes of the said Code, be deemed to be cognizable :

Certain offences under Act declared cognizable.

Provided that a person accused of any such offence shall not be released on bail unless on the order of a Magistrate of the first class.

(2) Every other offence against this Act shall be non-cognizable.

XLV of 1860. " 6. (1) Any person, being a public servant as defined in the <sup>2</sup> Indian Penal Code, may arrest any person who in his view commits any of the offences described in section 5, sub-section (1), and any such person, or any police-officer who has arrested any person on a charge of any such offence, and any police-officer to whom any person arrested on any such charge has been made over, shall take or send him before the officer for the time being in command or charge of the fortress, arsenal, factory, dockyard, camp or ship, or of the nearest military station, or before a Magistrate of the first class.

Procedure after arrest on charge of certain offences punishable under Act.

<sup>1</sup> General Acts, Vol. V.

<sup>2</sup> General Acts, Vol. I.

(2) Where any person has been taken or sent before the commanding or other officer in accordance with sub-section (1), such officer may, if he thinks fit, discharge such person, but, if he does not discharge him, shall, without unnecessary delay, take or send him to the nearest police-station or to any Magistrate of the first class.

V of 1898.

(3) Where any person has been taken or sent to a police-station or to a Magistrate under sub-section (2), the provisions of the <sup>1</sup> Code of Criminal Procedure, 1898, shall, save as otherwise provided by section 7, apply to him as though he had been taken to such police-station or Magistrate without being taken or sent before the commanding or other officer.

Restriction  
on trial of  
offences.

“ 7. (1) No Magistrate of the second class shall have jurisdiction to try any person for an offence against this Act.

(2) No Court shall proceed to the trial of any person for an offence against this Act, except with the consent of the Local Government or the Governor-General in Council.”

Alteration of  
expression  
“ Her Majes-  
ty ”.

6. For the expression “ Her Majesty ”, wherever it occurs in the said Act, the expression “ His Majesty ” shall be substituted.

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<sup>1</sup> General Acts, Vol V.

ACT NO. VI OF 1904.<sup>1</sup>

[11th March 1904.]

An Act further to amend the Transfer of Property Act, 1882.

IV of 1882.

WHEREAS it is expedient further to amend the <sup>1</sup> Transfer of Property Act, 1882 ; It is hereby enacted as follows :—

1. This Act may be called The Transfer of Property (Amendment) Act, Short title, 1904.

2. In the fourth paragraph of section 1 of the said Act, after the words “ extend this Act ” the words “ or any part thereof ” shall be inserted. Amendment of section 1, paragraph 4, Act IV of 1882.

3. In the second paragraph of section 59 of the said Act, for the words “ an instrument ” the words “ a registered instrument ” shall be substituted. Amendment of section 59, Act IV of 1882.

4. In the last paragraph of section 59 and in clause (c) of section 69 of the said Act, for the words “ and Rangoon ” and for the words “ or Rangoon ” the words “ Rangoon, Moulmein, Bassein and Akyab ” and the words “ Rangoon, Moulmein, Bassein or Akyab ” shall be respectively substituted. Amendment of last paragraph of section 59 and of section 69, Act IV of 1882.

5. For the second paragraph of section 107 of the said Act the following paragraph shall be substituted, namely :— Substitution of new paragraph for second paragraph of section 107, Act IV of 1882

“ All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession : ”

Provided that the Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.”

6. In section 117 of the said Act, after the words “ to be so applicable ” the words “ in the case of all or any of such leases ” shall be inserted. Amendment of section 117, Act IV of 1882.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1903, Pt. V, p. 459 ; for Report of Select Committee, see *ibid.*, 1904, Pt V, p. 53, and for proceedings in Council, see *ibid.*, 1903, Pt. VI, p. 152 ; *ibid.*, 1904, Pt. VI, pp. 2 & 72.

<sup>2</sup> General Acts, Vol. III.

THE ANCIENT MONUMENTS PRESERVATION  
ACT, 1904).

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ACT No. VII OF 1904. <sup>1</sup>

[18th March 1904.]

An Act to provide for the preservation of Ancient Monuments and objects of archæological, historical or artistic interest.

WHEREAS it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the protection and acquisition in certain cases of ancient monuments and of objects of archæological, historical or artistic interest; It is hereby enacted as follows :—

1. (1) This Act may be called the Ancient Monuments Preservation Act, 1904. Short title and extent.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(1) “ancient monument” means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archæological or artistic interest, or any remains thereof, and includes—

(a) the site of an ancient monument;

(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and

(c) the means of access to and convenient inspection of an ancient monument :

(2) “antiquities” include any moveable objects which the Government, by reason of their historical or archæological associations, may think it necessary to protect against injury, removal or dispersion :

(3) “Commissioner” includes any officer authorized by the Local Government to perform the duties of a Commissioner under this Act :

(4) “maintain” and “maintenance” include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto :

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<sup>1</sup> For Statement of Objects and Reasons see Gazette of India, 1903, Pt. V, p. 513; for Report of Select Committee, see *ibid.*, 1904, Pt. V, page 57 and for proceedings in Council, see *ibid.*, 1903, Pt. VI, pp. 166, 191; *ibid.*, 1904, Pt. VI, pp. 20 and 76.



## (Ancient Monuments.)

(5) "land" includes a revenue-free estate, a revenue-paying estate, and a permanent transferable tenure, whether such estate or tenure be subject to incumbrances or not: and

(6) "owner" includes a joint owner invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee:

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Protected  
monuments.

3. (1) The Local Government may, by notification<sup>1</sup> in the local official Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the Local Government within one month from the date when it is so fixed up, will be taken into consideration.

(3) On the expiry of the said period of one month, the Local Government, after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notification published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.

## Ancient Monuments.

Acquisition  
of rights in  
or guardian-  
ship of an  
ancient  
monument.

4. (1) The Collector, with the sanction of the Local Government, may purchase or take a lease of any protected monument.

(2) The Collector, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may by written instrument constitute the Commissioner the guardian of the monument, and the Commissioner may, with the sanction of the Local Government, accept such guardianship.

<sup>1</sup> (1) For notification by the Government of Bengal, see Calcutta Gazette, 1905, Pt. I, p. 1275; *ibid.*, 1906, Pt. I, p. 74; *ibid.*, 1908, Pt. I, p. 1248;

(2) For notification by the Government of Burma, see Burma Gazette, 1908, Pt. I, p. 571;

(3) *ibid.*, 1906, Pt. III, p. 615; Central Provinces, see C. P. Gazette, 1905, Pt. III, p. 37; *ibid.*, 1906, Pt. III, p. 615;

(4) For notification by the Government of Madras, see Mad. R. and O., Fort St. George Gazette, 1908, Pt. I, page 309;

(5) For notification by the Government of Punjab, see Punjab Gazette, 1907, Pt. I, p. 241.

*(Ancient Monuments.)*

(4) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Commissioner had not been constituted guardian thereof.

(5) When the Commissioner has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Commissioner may assume the guardianship of the monument.

5. (1) The Collector may, with the previous sanction of the Local Government, propose to the owner to enter into an agreement with the Secretary of State for India in Council for the preservation of any protected monument in his district. .

Preservation  
of ancient  
monument  
by agree-  
ment.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement :—

- (a) the maintenance of the monument ;
- (b) the custody of the monument, and the duties of any person who may be employed to watch it ;
- (c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument ;
- (d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Collector to inspect or maintain the monument ;
- (e) the notice to be given to the Government in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Government to purchase such land, or any specified portion of such land, at its market value ;
- (f) the payment of any expenses incurred by the owner or by the Government in connection with the preservation of the monument ;
- (g) the proprietary or other rights which are to vest in His Majesty in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument ;
- (h) the appointment of an authority to decide any dispute arising out of the agreement ; and

*(Ancient Monuments.)*

(2) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the Government.

(3) An agreement under this section may be executed by the Collector on behalf of the Secretary of State for India in Council, but shall not be so executed until it has been approved by the Local Government.

(4) The terms of an agreement under this section may be altered from time to time with the sanction of the Local Government and with the consent of the owner.

(5) With the previous sanction of the Local Government, the Collector may terminate an agreement under this section on giving six months' notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six months' notice to the Collector.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under  
disability  
not in possession.

6. (1) If the owner is unable, by reason of infancy or other disability to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village-property, the headman or other village-office exercising powers of management over such property may exercise the power conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

Enforcement  
of agreement.

7. (1) If the Collector apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agreement for its preservation under section 5, the Collector may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Collector necessary to such preserva-

*(Ancient Monuments.)*

tion or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Collector, the Collector may authorize any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land-revenue.

(3) A person aggrieved by an order made under this section may appeal to the Commissioner, who may cancel or modify it and whose decision shall be final.

VIII of 1819. 8. Every person who purchases, at a sale for arrears of land revenue or any other public demand, or at a sale made under the<sup>1</sup> Bengal Patni Taluks Regulation, 1819, an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5, and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Collector, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Collector may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof.

Application of endowment to repair of an ancient monument.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

10. (1) If the Local Government apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, the Local Government may proceed to acquire it under the provisions of the<sup>2</sup> Land Acquisition Act, 1894 as if the preservation of a protected monument were a "public purpose" within the meaning of that Act.

Compulsory purchase of ancient monument.

I of 1894.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(a) any monument which or any part of which is periodically used for religious observances; or

<sup>1</sup> Ben. Code.

<sup>2</sup> Genl. Acts, Vol. IV.

(b) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Collector may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

Maintenance  
of certain  
protected  
monuments.

11. (1) The Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has acquired under section 10.

(2) When the Commissioner has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself and by his agent, subordinates, and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

Voluntary  
contribu-  
tions.

12. The Commissioner may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him :

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection  
of place of  
worship  
from misuse,  
pollution or  
desecration.

13. (1) A place of worship or shrine maintained by the Government under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Collector has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Commissioner has, under the same section, accepted the guardianship thereof, and such monument, or any part thereof, is periodically used for religious worship or observances by any community, the Collector shall make due provision for the protection of such monument, or such part thereof, from pollution or desecration—

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

*(Ancient Monuments. Traffic in Antiquities.)*

14. With the sanction of the Local Government, the Commissioner may—

Relinquish-  
ment of  
Government  
rights in a  
monument.

- (a) where rights have been acquired by Government in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or
- (b) relinquish any guardianship of a monument which he has accepted under this Act.

15. (1) Subject to such rules as may after previous publication be made by the Local Government, the public shall have a right of access to any monument maintained by the Government under this Act.

Right of  
access to  
certain pro-  
tected monu-  
ments.

(2) In making any rule under sub-section (1) the Local Government may provide that a breach of it shall be punishable with fine which may extend to twenty rupees.

16. Any person other than the owner who destroys, removes, injures, alters, defaces or imperils a protected monument, and any owner who destroys, removes, injures, alters, defaces or imperils a monument maintained by Government under this Act or in respect of which an agreement has been executed under section 5, and any owner or occupier who contravenes an order made under section 7, sub-section (1), shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months, or with both.

Penalties.

*Traffic in Antiquities.*

17. (1) If the Governor General in Council apprehends that antiquities are being sold or removed to the detriment of India or of any neighbouring country, he may, by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land of any antiquities or class of antiquities described in the notification into or out of British India or any specified part of British India.

Power to  
Governor  
General in  
Council to  
control traffic  
in anti-  
quities.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of British India or any part of British India in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.

(4) An officer of Customs, or an officer of Police of a grade not lower than Sub-Inspector duly empowered by the Local Government in this behalf, may

*(Protection of Sculptures, Carvings, Images, Bas-reliefs, Inscriptions or like objects.)*

search any vessel, cart or any other means of conveyance, and may open any baggage or package of goods, if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly exercised may address his complaint to the Local Government, and the Local Government shall pass such order and may award such compensation, if any, as appears to it to be just.

*Protection of Sculptures, Carvings, Images, Bas-reliefs, Inscriptions or like objects.*

Power to  
Local Govern-  
ment to con-  
trol moving  
of sculptures,  
carvings or  
like objects.

18. (1) If the Local Government considers that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the Government, the Local Government may, by notification<sup>1</sup> in the local official Gazette, direct that any such object or any class of such objects shall not be moved unless with the written permission of the Collector.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Collector may require.

(3) If the Collector refuses to grant such permission, the applicant may appeal to the Commissioner, whose decision shall be final.

(4) Any person who moves any object in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(5) If the owner of any property proves to the satisfaction of the Local Government that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1), the Local Government shall either—

- (a) exempt such property from the said notification ;
- (b) purchase such property, if it be moveable, at its market-value ; or
- (c) pay compensation for any loss or damage sustained by the owner of such property, if it be immoveable.

Purchase of  
sculptures,  
carvings or

19. (1) If the Local Government apprehends that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being

<sup>1</sup> For notification by the Government of—

(1) Benaul, see Calcutta Gazette, 1908, Pt. I, p. 1248, and *ibid*, 1909, Pt. I, p. 23 ;

(2) Central Provinces, see C. P. Gazette, 1906, Pt. III, p. 616.

*(Excavations. General.)*

destroyed, removed, injured or allowed to fall into decay, the Local Government may pass orders for the compulsory purchase of such object at its market-value, and the Collector shall thereupon give notice to the owner of the object to be purchased.

like objects  
by the Gov-  
ernment.

(2) The power of compulsory purchase given by this section shall not extend to—

- (a) any image or symbol actually used for the purpose of any religious observance; or
- (b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

*Excavations.*

20. (1) If the Local Government is of opinion that excavation within the limits of any local area ought to be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Local Government may, by notification<sup>1</sup> in the local official Gazette, make rules—

Power to  
Local Gov-  
ernment to  
control exca-  
vation.

- (a) fixing the boundaries of the area to which the rules are to apply, and
- (b) prescribing the authority by which, and the terms on which, licenses to excavate may be granted.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any owner or occupier of land included in a notification under subsection (1), proves to the satisfaction of the Local Government that he has sustained any loss by reason of such land being so included, the Local Government shall pay compensation in respect of such loss.

*General.*

21. (1) The market-value of any property which Government is empowered to purchase at such value under this Act, or the amount of compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises touching the amount of such market-value or compensation, be ascertained in the manner provided by the <sup>2</sup> Land Acquisition Act, 1894,

Assessment  
of market-  
value or com-  
pensation.

1 of 1894.

<sup>1</sup> For notification by the Government of—

(1) Central Provinces, *see* C. P. Gazette, 1906, Pt. III, p. 617.

(2) Madras, *see* Madras R. and O.

<sup>2</sup> General Acts, Vol. IV.



(General)

sections 3, 8 to 34, 45 to 47, 51 and 52, so far as they can be made applicable :

Provided that when making an inquiry under the said <sup>1</sup> Land Acquisition Act, 1894, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector, and one a person nominated by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector.

Jurisdiction.

22. A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act.

Power to make rules.

23. (1) The Governor General in Council or the Local Government may make rules<sup>2</sup> for carrying out any of the purposes of this Act.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

Protection to public servants acting under Act.

24. No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Act.

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<sup>1</sup> General Acts, Vol. IV.

<sup>2</sup> For rules made by the Government of Madras for the decipherment, publication, and custody of Indian inscriptions on stone and copper, *see* Mad. R. and O.

## THE INDIAN UNIVERSITIES ACT, 1904.

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THE FIRST SCHEDULE.—*Ex-officio* FELLOWS OF THE UNIVERSITY.

THE SECOND SCHEDULE.—ENACTMENTS REPEALED.

ACT No. VIII OF 1904<sup>1</sup>.

[24th March, 1904.]

## An Act to amend the law relating to the Universities of British India.

WHEREAS by <sup>2</sup> Acts II, XXII and XXVII of 1857, <sup>3</sup> Act XIX of 1882 and <sup>4</sup> Act XVIII of 1887, Universities were established and incorporated at Calcutta, Bombay, Madras, Lahore and Allahabad ;

And whereas by <sup>2</sup> Act XLVII of 1860 the Universities of Calcutta, Madras and Bombay were empowered to confer such degrees as should be appointed in the manner provided by the Act ;

And whereas by <sup>3</sup> Act I of 1884 the Universities of Calcutta, Madras and Bombay were further empowered to confer the honorary degree of Doctor in the Faculty of Law ;

And whereas it is expedient to amend the law relating to the Universities of British India ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Universities Act, 1904 ; and
- (2) It shall come into force on such date<sup>5</sup> as the Government may fix in this behalf by notification in the Gazette of India or the local official Gazette, as the case may be.
2. (1) This Act shall be deemed to be part of each of the Acts by which the said five Universities were respectively established and incorporated.
- (2) In this Act, unless there is anything repugnant in the subject or context,—
- (a) the term “ College ” or “ affiliated College ” includes any collegiate

Short title  
and com-  
mencement.

Interpreta-  
tion.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1903, Pt. V, p. 528 ; for Report of Select Committee, see *ibid*, 1904, Pt. V, p. 29 and for Proceedings in Council, see *ibid*, 1903, Pt. VI, p. 178, *ibid*, 1904, Pt. VI, pp. 4, 20, 81, 137, 162.

<sup>2</sup> General Acts, Vol. I.

<sup>3</sup> General Acts, Vol. III.

<sup>4</sup> General Acts, Vol. IV.

<sup>5</sup> For notification bringing the Act into force —

- (1) within the territorial limits of the Calcutta University on 1st September, 1904, see Gazette of India, 1904, Pt. I, p. 628 ;
- (2) in Coorg on 9th September, 1904, see Coorg District Gazette Extraordinary, 6th September, 1904 ;
- (3) within the territorial limits of the University of Madras on 9th September, 1904, see Fort St. George Gazette, 1904, Pt. IB, p. 616 ;
- (4) in the Bombay Presidency on 18th July, 1904, see Bombay Govt. Gazette, 1904, Pt. I, p. 906 ;
- (5) in the Punjab on 1st October, 1904, see Punjab Gazette, 1904, Pt. I, p. 706 ;
- (6) in the North-West Frontier Province on 1st October, 1904, see Gazette of India, 1904, Pt. II, p. 1095 ;
- (7) within the territorial limits of the Allahabad University on 1st October, 1904, see United Provinces Gazette, 1904, Pt. I, p. 647 ;
- (8) in British Baluchistan, on 1st October 1904, see Gazette of India, 1904, Pt. II, p. 1141.

institution affiliated to or maintained by the University :

- (b) the expression "the Government" means in relation to the University of Calcutta the Governor-General in Council, and in relation to the other Universities the Local Government: and
- (c) The expressions "the University" and "the Act of Incorporation" and any expression denoting any University, authority or officer or any statute, regulation, rule or by-law of the University shall be construed with reference to each of the said Universities respectively.

*The University.*

Incorporation and power of the University.

3. The University shall be and shall be deemed to have been incorporated for the purpose (among others) of making provision for the instruction of students, with power to appoint University Professors and Lecturers, to hold and manage educational endowments, to erect, equip and maintain University libraries, laboratories and museums, to make regulations relating to the residence and conduct of students, and to do all acts, consistent with the Act of Incorporation and this Act, which tend to the promotion of study and research.

Constitution and powers of the Senate.

4. (1) Notwithstanding anything contained in the Act of Incorporation, the Body Corporate of the University shall consist of—

- (a) the Chancellor;
- (b) in the case of the University of Calcutta, the Rector;
- (c) the Vice-Chancellor;
- (d) the *ex-officio* Fellows; and
- (e) the Ordinary Fellows—
  - (i) elected by registered Graduates or by the Senate,
  - (ii) elected by the Faculties, and
  - (iii) nominated by the Chancellor.

(2) The Ordinary Fellows shall, save as herein otherwise provided, hold office for five years :

Provided that an Ordinary Fellow who has vacated his office may, subject to the provisions of this Act, be elected or nominated to be an Ordinary Fellow.

(3) The Body Corporate shall be the Senate of the University, and all powers which are by the Act of Incorporation or by this Act conferred upon the Senate, or upon the Chancellor, Vice-Chancellor and Fellows in their corporate capacity, or, in the case of the University of Calcutta, upon the Chancellor, Rector, Vice-Chancellor and Fellows in their corporate capacity, shall be vested in, and exercised by, the Senate constituted under this Act, and all duties and liabilities imposed upon the University by the Act of Incorporation.

(Fellows.)

poration shall be deemed to be imposed upon the Body Corporate as constituted under this Act.

(4) No act done by the University shall be deemed to be invalid merely by reason of any vacancy among either class of elected Ordinary Fellows, or by reason of the total number of Ordinary Fellows or of members of the profession of education to be included among Ordinary Fellows, being less than the minimum prescribed by this Act.

*Fellows.*

5. (1) Notwithstanding anything contained in the Act of Incorporation, *Ex officio* the persons for the time being performing the duties of the offices mentioned *Fellows.* in the list contained in the first schedule to this Act or added to the said list under sub-section (2) shall be the *ex officio* Fellows of the University.

(2) The Government may, by notification published in the Gazette of India or in the local official Gazette, as the case may be, make additions to, or alterations in, the list of offices contained in the said schedule:

Provided that the number of *ex officio* Fellows shall not exceed ten.

6. (1) In the case of the Universities of Calcutta, Bombay and Madras, *Ordinary* the number of Ordinary Fellows shall not be less than fifty nor exceed one *Fellows.* hundred; and of such number—

- (a) ten shall be elected by registered Graduates;
- (b) ten shall be elected by the Faculties; and
- (c) the remainder shall be nominated by the Chancellor.

(2) In the case of the Universities of the Punjab and Allahabad, the number of Ordinary Fellows shall not be less than forty nor exceed seventy-five; and of such number—

- (a) ten shall be elected by the Senate or by registered Graduates;
- (b) five shall be elected by the Faculties; and
- (c) the remainder shall be nominated by the Chancellor.

(3) The election of any Ordinary Fellow shall be subject to the approval of the Chancellor.

(4) Elections of Ordinary Fellows by the Faculties and nomination of such Fellows by the Chancellor under this section shall be made in such manner as to secure that not less than two-fifths of the Fellows so elected and so nominated respectively shall be persons following the profession of education.

7. (1) Once in every year, on such date as the Chancellor may appoint in this behalf, there shall, if necessary, be an election to fill any vacancy among the Ordinary Fellows elected by registered Graduates. *Ordinary* *Fellows* *elected by* *registered* *Graduates.*

(Fellows.)

(2) The Syndicate shall maintain a register on which any Graduate who—

- (a) has taken the degree of Doctor or Master in any Faculty, or
- (b) has graduated in any Faculty not less than ten years before registration,

shall, subject to the payment of an initial fee of such amount as may be prescribed by the regulations, be entitled to have his name entered upon application made within the period of three years from the commencement of this Act or of one year from the date on which he becomes so entitled :

Provided that, if such application is made after the expiry of either of the said periods, the applicant shall be entitled to have his name entered on payment of the said initial fee, and of such further sum as may be prescribed by the regulations.

(3) The name of any Graduate entered on the register shall, subject to the payment of an annual fee of such amount as may be prescribed by the regulations, be retained thereon, and, in case of default, shall be removed therefrom, but shall, at any time, be re-entered upon payment of all arrears :

Provided that a Graduate whose name has been already entered on the register may at any time compound for all subsequent payments of the annual fee by paying the sum prescribed in this behalf by the regulations.

(4) No person other than a Graduate whose name is entered on the said register shall be qualified to vote or to be elected at an election held under sub-section (1).

(5) A Graduate registered under this section shall be entitled to such further privileges as may be determined by the regulations.

Ordinary  
Fellows  
elected by  
Senate.

8. (1) The provisions of section 7 shall not apply to the University of the Punjab or to the University of Allahabad until the Chancellor, with the previous sanction of the Governor General in Council and by notification in the local official Gazette, so directs ; and until such time the Ordinary Fellows of the said Universities, who would be elected by registered Graduates if the said provisions were in force, shall be elected by the Senate.

(2) In the case of the University of the Punjab and the University of Allahabad, there shall, if necessary, be an election, once in every year, on such date as the Chancellor may appoint in this behalf, to fill any vacancy among the Ordinary Fellows elected by the Senate.

Election by  
the Faculties.

9. (1) Once in every year, on such date as the Chancellor may appoint in this behalf, there shall, if necessary, be an election to fill any vacancy among the Ordinary Fellows elected by the Faculties.

(2) An election under sub-section (1) shall be held, subject to such direc-

*(Fellows. Transitory Provisions.)*

tions prescribing the qualifications of the persons to be elected as may, from time to time, be given by the Chancellor, with a view to secure the return of duly qualified persons and the fair representation of different branches of study in the Senate.

10. Subject to the provisions of section 6, the Chancellor may nominate any number of fit and proper persons to be Ordinary Fellows. Nomination by the Chancellor.

11. (1) Any Ordinary Fellow may, by letter addressed to the Chancellor, resign his office. Vacating of office.

(2) Where any Ordinary Fellow has not attended a meeting of the Senate other than a Convocation, during the period of one year, the Chancellor may declare his office to be vacated.

*Transitory Provisions.*

12. In their application to the election and nomination of Ordinary Fellows within the period of one year after the commencement of this Act and to the current business of the University, the provisions of this Act shall be read as subject to the following restrictions and modifications :— Election and nomination of Ordinary Fellows within one year after commencement of Act, and temporary continuance of existing University administration.

- (a) In the case of the Universities of Calcutta, Bombay and Madras, the Chancellor shall as soon as may be after the commencement of this Act, make an order directing that the Ordinary Fellows who under the said provisions are to be elected by registered Graduates, shall be elected by the elected Fellows holding office at the commencement of the Act, or by such Graduates of the University as the Chancellor may determine, or partly by elected Fellows and partly by such Graduates, and in such manner as the Chancellor may direct.
- (b) When the Ordinary Fellows mentioned in clause (a) have been elected, the Chancellor shall proceed to the nomination of Ordinary Fellows under section 6, sub-section (1), clause (c).
- (c) The Ordinary Fellows mentioned in clauses (a) and (b) shall, as soon as may be after their appointment and in such manner as the Chancellor may direct, elect the Fellows who under the said provisions are to be elected by the Faculties.
- (d) In the case of the Universities of the Punjab and Allahabad, the Chancellor shall, as soon as may be after the commencement of this Act, proceed to nominate Ordinary Fellows under section 6, sub-section (2), clause (c).
- (e) When Ordinary Fellows have been appointed under clause (d), the Chancellor shall make an order directing that the Fellows who under the said provisions are to be elected by the Senate, shall be elected by the Ordinary Fellows appointed under clause (d), or



*(Transitory Provisions.)*

by elected Fellows holding office at the commencement of this Act, or partly by such Ordinary Fellows and partly by elected Fellows, in such manner as the Chancellor may direct.

- (*f*) The Ordinary Fellows mentioned in clauses (*d*) and (*e*) shall, as soon as may be after their appointment, and in such manner as the Chancellor may direct, elect the Fellows who under the said provisions are to be elected by the Faculties.
- (*g*) An election under clause (*c*) or clause (*f*) shall be made subject to such directions prescribing the qualifications of the persons to be elected as may be given by the Chancellor, with a view to secure the return of duly qualified persons and a fair representation of different branches of study in the Senate
- (*h*) As soon as Ordinary Fellows have been nominated and elected under clauses (*a*), (*b*) and (*c*), or under clauses (*d*), (*e*) and (*f*), as the case may be, and the persons so elected have been approved by the Chancellor, the Chancellor shall declare<sup>1</sup> that the Body Corporate of the University has been constituted in accordance with the provisions of this Act, and shall append to the declaration a list of the Senate, and shall forward the said declaration and the appended list to the Governor General in Council, who shall cause the declaration and list to be published in the Gazette of India.
- (*i*) The seniority of the Fellows included in the list mentioned in clause (*h*) shall be determined by the order in which their names appear in the list.
- (*j*) Until the said declaration is published under clause (*h*), the Fellows holding office at the commencement of this Act shall, together with the Chancellor and the Vice-Chancellor, continue to be the Senate of the University, and shall be entitled to exercise the powers conferred upon them by the Act of Incorporation.
- (*k*) Every Ordinary Fellow elected or nominated under this section shall, unless his Fellowship is previously vacated by death, resignation or any other cause, hold office for not less than three years.
- (*l*) At or about the end of the third year from the publication of the declaration mentioned in clause (*h*), the names of, as nearly as may be, one-fifth of the total initial number—
  - (*i*) of Ordinary Fellows elected under clause (*a*) or clause (*e*), as the case may be,

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<sup>1</sup> For declaration by the Chancellor of the University of (1) Calcutta, (2) Madras, (3) Bombay, (4) Punjab, and (5) Allahabad, see Gazette of India, 1904, Pt I, pp. 908, 891, 911, 931 and 878 respectively.

*(Transitory Provisions.)*

- (ii) of Ordinary Fellows elected under clause (c) or clause (f), and  
(iii) of Ordinary Fellows nominated by the Chancellor,  
(after deducting from the said one-fifth the names in each class which  
have previously been removed from the list mentioned in clause  
(h) by reason of death, resignation or any other cause) shall be  
drawn by lot from among the elected and the nominated Ordinary  
Fellows whose names were included in the list mentioned in clause  
(h), and those whose names are so shown shall thereupon cease to  
be Ordinary Fellows.
- (m) At or about the end of the fourth, fifth and sixth years from the  
publication of the said declaration the names of Ordinary Fellows  
shall be drawn by lot from each class of Ordinary Fellows included  
in the said list, in the manner provided in clause (l), so as to  
secure that, as nearly as may be, one-fifth of the Fellowships of  
the Ordinary Fellows so included in each class shall be vacated  
in each year.
- (n) An Ordinary Fellow elected or nominated under this section, who has  
not previously vacated his Fellowship, shall cease to be a Fellow  
at the end of the seventh year from the publication of the said  
declaration.
- (o) The Vice-Chancellor holding office at the commencement of this Act  
shall continue to hold office until the publication of the said declaration, and shall, if he is a member of the Senate as constituted  
under this Act, continue to hold office as Vice-Chancellor for the  
remainder of the term for which he was originally appointed.
- (p) The members of the Syndicate holding office at the commencement  
of this Act shall continue to conduct the executive business of the  
University until the publication of the said declaration; and, upon  
such publication, the Senate shall, in such manner as the Chancellor  
may direct, appoint a provisional Syndicate to conduct the  
executive business of the University until the Syndicate has been  
constituted under this Act.
- (q) The Senate as constituted under this Act may give orders for the  
provisional constitution of Faculties, Boards of Studies and of any  
Board or Committee of the Senate, pending the constitution of  
such Faculties, Boards and Committees in conformity with the  
regulations.
- (r) University Examiners and all officers and servants of the University

*(Honorary Fellows. Faculties and Syndicate.)*

shall continue to hold office and to act, subject to the conditions governing their tenure of office or employment, except in so far as such conditions may be altered by competent authority.

- (s) The statutes, regulations and by-laws of the University in force at the commencement of this Act shall continue to be in force, except in so far as the said statutes, regulations and by-laws shall be altered or repealed by competent authority.

*Honorary Fellows.***Honorary  
Fellows.**

13. (1) (a) A Fellow holding office at the commencement of this Act shall cease to be a Fellow.

(b) Where a Fellow included in clause (a) does not become a Fellow under this Act, he shall be an Honorary Fellow for life.

(c) Where a Fellow included in clause (a) becomes a Fellow under this Act, he shall, whenever and so often as he ceases to be a Fellow under this Act, become an Honorary Fellow as provided in clause (b).

(2) The Chancellor may nominate any person to be an Honorary Fellow for life, who is eminent for his attainments in any branch of learning, or is an eminent benefactor of the University, or is distinguished for services rendered to the cause of education generally.

(3) Notwithstanding anything contained in this section, any Fellow who at the commencement of this Act is entitled as such to vote for the election of any person to be a member of any Council for the purpose of making laws and regulations or of any local authority shall continue to be so entitled as if this Act had not been passed.

*Faculties and Syndicate.***Faculties.**

14. (1) Nothing contained in the Act of Incorporation shall be deemed to prohibit the constitution of a new Faculty or the abolition or reconstitution of any existing Faculty by the Senate under regulations made in accordance with the provisions of this Act.

(2) Regulations made under sub-section (1) may—

(a) provide for the assignment of Fellows to the several Faculties by order of the Senate; and

(b) empower the Fellows so assigned to add to their number, in such manner and for such period as may be prescribed, Graduates in the Faculty and other persons possessing special knowledge of the subjects of study represented by the Faculty :

Provided that the number of persons so to be added to the Faculty shall not exceed half the number of Fellows assigned to the Faculty.

*(Faculties and Syndicate.)*

(3) A person added to a Faculty under sub-section (2), clause (b), shall have the right to take part in the ordinary business of the Faculty, and in any election of an Ordinary Fellow by the Faculty, but shall not be entitled to take part in the election of the Syndicate.

15. (1) The executive government of the University shall be vested in Syndicate. the Syndicate, which shall consist of—

- (a) the Vice-Chancellor as Chairman ;
- (b) the Director of Public Instruction for the Province in which the headquarters of the University are situated ; and, in the case of the University of Allahabad, also the Director of Public Instruction in the Central Provinces ; and
- (c) not less than seven or more than fifteen *ex officio* or Ordinary Fellows elected by the Senate or by the Faculties in such manner as may be provided by the regulations, to hold office for such period as may be prescribed by the regulations.

(2) The regulations referred to in sub-section (1) shall be so framed as to secure that a number not falling short by more than one of a majority of the elected members of the Syndicate shall be Heads of, or Professors in, Colleges affiliated to the University.

(3) If in the case of any election the question is raised whether any person is or is not a Professor within the meaning of sub-section (2), the question shall be decided by the Senate.

*Degrees.*

16. The Senate may institute and confer such degrees, and grant such diplomas, licenses, titles and marks of honour in respect of degrees and examinations as may be prescribed by regulation.

Degrees,  
diplomas,  
licenses,  
titles and  
marks of  
honour.  
Honorary  
degrees.

17. Where the Vice-Chancellor and not less than two-thirds of the other members of the Syndicate recommend that an honorary degree be conferred on any person on the ground that he is, in their opinion, by reason of eminent position and attainments, a fit and proper person to receive such a degree and where their recommendation is supported by not less than two-thirds of the Fellows present at a meeting of the Senate and is confirmed by the Chancellor, the Senate may confer on such person the honorary degree so recommended without requiring him to undergo any examination.

18. Where evidence is laid before the Syndicate showing that any person on whom a degree, diploma, license, title or mark of honour conferred or granted by the Senate has been convicted of what is, in their opinion, a serious offence, the Syndicate may propose to the Senate that the degree,

Cancellation  
of degrees  
and the like.

*(Affiliated Colleges.)*

diploma, license, title or mark of honour be cancelled, and, if the proposal is accepted by not less than two-thirds of the Fellows present at a meeting of the Senate and is confirmed by the Chancellor, the degree, diploma, license, title or mark of honour shall be cancelled accordingly.

*Affiliated Colleges.*

Certificate  
required of  
candidates  
for examina-  
tion.

19. Save on the recommendation of the Syndicate, by special order of the Senate, and subject to any regulations made in this behalf, no person shall be admitted as a candidate at any University examination, other than an examination for matriculation, unless he produces a certificate from a College affiliated to the University, to the effect that he has completed the course of instruction prescribed by regulation.

Existing  
Colleges.

20. Any College affiliated to the University before the passing of this Act may continue to exercise the rights conferred upon it by such affiliation, save in so far as such rights may be withdrawn or restricted in the exercise of any power conferred by the Act of Incorporation or by this Act.

Affiliation.

21. (1) A College applying for affiliation to the University shall send a letter of application to the Registrar, and shall satisfy the Syndicate—

- (a) that the College is to be under the management of a regularly constituted governing body ;
- (b) that the qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction to be undertaken by the College ;
- (c) that the buildings in which the College is to be located are suitable, and that provision will be made, in conformity with the regulations, for the residence, in the College or in lodgings approved by the College, of students not residing with their parents or guardians, and for the supervision and physical welfare of students ;
- (d) that due provision has been or will be made for a library ;
- (e) where affiliation is sought in any branch of experimental science, that arrangements have been or will be made in conformity with the regulations for imparting instruction in that branch of science in a properly equipped laboratory or museum ;
- (f) that due provision will, so far as circumstances may permit, be made for the residence of the Head of the College and some members of the teaching staff in or near the College or the place provided for the residence of students ;
- (g) that the financial resources of the College are such as to make due provision for its continued maintenance ;
- (h) that the affiliation of the College having regard to the provision

*(Affiliated Colleges.)*

made for students by other Colleges in the same neighbourhood, will not be injurious to the interests of education or discipline ; and

- (i) that the College rules fixing the fees (if any) to be paid by the students have not been so framed as to involve such competition with any existing College in the same neighbourhood as would be injurious to the interests of education.

The application shall further contain an assurance that after the College is affiliated any transference of management and all changes in the teaching staff shall be forthwith reported to the Syndicate.

(2) On receipt of a letter of application under sub-section (1), the Syndicate shall—

- (a) direct a local inquiry to be made by a competent person authorized by the Syndicate in this behalf ;  
 (b) make such further inquiry as may appear to them to be necessary ; and  
 (c) report to the Senate on the question whether the application should be granted or refused, either in whole or in part, embodying in such report the results of any inquiry under clauses (a) and (b).

And the Senate shall, after such further inquiry (if any) as may appear to them to be necessary, record their opinion on the matter.

(3) The Registrar shall submit the application and all proceedings of the Syndicate and Senate relating thereto to the Government, who, after such further inquiry as may appear to them to be necessary, shall grant or refuse the application or any part thereof.

(4) Where the application or any part thereof is granted, the order of the Government shall specify the courses of instruction in respect of which the College is affiliated ; and, where the application or any part thereof is refused, the grounds of such refusal shall be stated.

(5) An application under sub-section (1) may be withdrawn at any time before an order is made under sub-section (3).

22. Where a College desires to add to the courses of instruction in respect of which it is affiliated, the procedure prescribed by section 21 shall, so far as may be, be followed.

Extension  
of affiliation.

23. (1) Every College affiliated to the University, whether before or after the commencement of this Act, shall furnish such reports, returns and other information as the Syndicate may require to enable it to judge of the efficiency of the College.

Inspection  
and reports.

(2) The Syndicate shall cause every such College to be inspected from

*(Affiliated Colleges. Regulations)*

time to time by one or more competent persons authorized by the Syndicate in his behalf.

(3) The Syndicate may call upon any College so inspected to take, within a specified period, such action as may appear to them to be necessary in respect of any of the matters referred to in section 21, sub-section (1).

**Disaffiliation.**

24. (1) A member of the Syndicate who intends to move that the rights conferred on any College by affiliation be withdrawn, in whole or in part, shall give notice of his motion, and shall state in writing the grounds on which the motion is made.

(2) Before taking the said motion into consideration, the Syndicate shall send a copy of the notice and written statement mentioned in sub-section (1) to the Head of the College concerned, together with an intimation that any representation in writing submitted within a period specified in such intimation on behalf of the College will be considered by the Syndicate :

Provided that the period so specified may, if necessary, be extended by the Syndicate.

(3) On receipt of the representation or on expiration of the period referred to in sub-section (2), the Syndicate, after considering the notice of motion, statement and representation and after such inspection by any competent person authorized by the Syndicate in this behalf, and such further inquiry as may appear to them to be necessary, shall make a report to the Senate.

(4) On receipt of the report under sub-section (3), the Senate shall, after such further inquiry (if any) as may appear to them to be necessary, record their opinion on the matter.

(5) The Registrar shall submit the proposal and all proceedings of the Syndicate and Senate relating thereto to the Government, who, after such further inquiry (if any) as may appear to them to be necessary, shall make such order as the circumstances may, in their opinion, require.

(6) Where by an order made under sub-section (5) the rights conferred by affiliation are withdrawn, in whole or in part, the grounds for such withdrawal shall be stated in the order.

*Regulations.***Regulations.**

25. (1) The Senate, with the sanction of the Government, may from time to time make regulations consistent with the Act of Incorporation as amended by this Act and with this Act to provide for all matters relating to the University.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) the procedure to be followed in holding any election of Ordinary Fellows ;

## (Regulations.)

- (b) the constitution, reconstitution or abolition of Faculties, the proportion in which the members, other than the *ex officio* members, or the Syndicate shall be elected to represent the various Faculties and the mode in which such election shall be conducted ;
- (c) the procedure at meetings of the Senat, Syndicate and Faculties and the quorum of members to be required for the transaction of business ;
- (d) the appointment of Fellows and others to be members of Boards of Studies, and the procedure of such Boards and the quorum of members to be required for the transaction of business ;
- (e) the appointment and duties of the Registrar and of officers and servants of the University, and of Professors and Lecturers appointed by the University ;
- (f) the appointment of Examiners, and the duties and powers of Examiners in relation to the examinations of the University ;
- (g) the form of the certificate to be produced by a candidate for examination under section 19 and the conditions on which any such certificate may be granted ;
- (h) the registers of graduates and students to be kept by the University, and the fee (if any) to be paid for the entry or retention of a name on any such register ;
- (i) the inspection of Colleges and the reports, returns and other information to be furnished by Colleges ;
- (j) the registers of students to be kept by Colleges affiliated to the University ;
- (k) the rules to be observed and enforced by Colleges affiliated to the University in respect of the transfer of students ;
- (l) the fees to be paid in respect of the courses of instruction given by Professors or Lecturers appointed by the University ;
- (m) the residence and conduct of students ;
- (n) the courses of study to be followed and the conditions to be complied with by candidates for any University examination, other than an examination for matriculation, and for degrees, diplomas licenses, titles, marks of honour, scholarships and prizes conferred or granted by the University ;
- (o) the conditions to be complied with by schools desiring recognition for the purpose of sending up pupils as candidates for the matriculation examination and the conditions to be complied with by can-



*(Regulations. Miscellaneous)*

didates for matriculation, whether sent up by recognised schools or not ;

- (p) the conditions to be complied with by candidates, not being students of any College affiliated to the University, for degrees, diplomas, licenses, titles, marks of honour, scholarships and prizes conferred or granted by the University ; and
- (q) the alteration or cancellation of any rule, regulation, statute or by-law of the University in force at the commencement of this Act.

**New body of regulations.**

26. (1) Within one year after the commencement of this Act, or within such further period as the Government may fix in this behalf,—

- (a) the Senate as constituted under this Act shall cause a revised body of regulations to be prepared and submitted for the sanction of the Government ;
- (b) if any additions to, or alterations in, the draft submitted appear to the Government to be necessary, the Government, after consulting the Senate, may sanction the proposed body of regulations with such additions and alterations as appear to the Government to be necessary.

(2) Where a draft body of regulations is not submitted by the Senate within the period of one year after the commencement of this Act, or within such further period as may be fixed under sub-section (1), the Government may, within one year after the expiry of such period or of such further period, make regulations which shall have the same force as if they had been prepared and sanctioned under sub-section (1).

*Miscellaneous.*

**Territorial exercise of powers.**

27. The Governor General in Council may, by general or special order,<sup>1</sup> define the territorial limits within which, and specify the Colleges in respect of which, any powers conferred by or under the Act of Incorporation or this Act shall be exercised.

**Rector.**

28. (1) The Lieutenant-Governor of Bengal for the time being shall be the Rector of the University of Calcutta, and shall have precedence in any Convocation of the said University next after the Chancellor and before the Vice-Chancellor.

(2) The Chancellor may delegate any power conferred upon him by the Act of Incorporation or this Act to the Rector.

**Repeals.**

29. The Acts mentioned in the second schedule are hereby repealed to the extent specified in the fourth column thereof.

<sup>1</sup> For order 'defining the territorial limits of the five Universities, see Genl. R. and O. and Gazette of India, 1904, Pt. I, p. 627.

(*The First Schedule. Ex-officio Fellows of the Universities.*)

THE FIRST SCHEDULE.

(*Section 5.*)

EX-OFFICIO FELLOWS OF THE UNIVERSITY.

*The University of Calcutta.*

The Chief Justice of the High Court of Judicature at Fort William in Bengal.

The Lord Bishop of Calcutta.

The Civil Ordinary Members of the Council of the Governor General.

The Directors of Public Instruction in Bengal, Burma and Assam.

*The University of Bombay.*

The Chief Justice of the High Court of Judicature at Bombay.

The Bishop of Bombay.

The Ordinary Members of the Council of the Governor of Bombay.

The Director of Public Instruction in Bombay.

*The University of Madras.*

The Chief Justice of the High Court of Judicature at Madras.

The Bishop of Madras.

The Ordinary Members of the Council of the Governor of Madras.

The Director of Public Instruction in Madras.

*The University of the Punjab.*

The Chief Judge of the Chief Court of the Punjab.

The Bishop of Lahore.

The Director of Public Instruction in the Punjab.

The representatives of such Chiefs (if any) of territories not comprised in British India as the Local Government may, by notification in the local official Gazette, specify in this behalf.

*The University of Allahabad.*

The Chief Justice of the High Court of Judicature for the North-Western Provinces.

The Bishop of Lucknow.

The Directors of Public Instruction in the United Provinces of Agra and Oudh and in the Central Provinces.

(The Second Schedule. Enactments repealed.)

## THE SECOND SCHEDULE.

(Section 29.)

## ENACTMENTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1857	II	The Calcutta University Act, 1857.	<p>In section 2, the word "said", wherever it occurs.</p> <p>In section 3, the first sentence and the words "Provided that".</p> <p>In section 5, the words "in the Calcutta Gazette".</p> <p>Section 6.</p> <p>Section 8, except the first sentence.</p> <p>Sections 9, 10, 11, 12, 13 and 14.</p>
	XXII	The Bombay University Act, 1857.	<p>In section 2, the word "said", wherever it occurs.</p> <p>In section 3, the first sentence and the words "Provided that".</p> <p>Section 6.</p> <p>Section 8, except the first sentence.</p> <p>Sections 9, 10, 11, 12, 13 and 14.</p>
	XXVII	The Madras University Act, 1857.	<p>In section 2, the word "said", wherever it occurs.</p> <p>In section 3, the first sentence and the words "Provided that".</p> <p>Section 6.</p> <p>Section 8, except the first sentence.</p> <p>Sections 9, 10, 11, 12, 13 and 14.</p>
1860	XLVII	The Indian Universities (Degrees) Act, 1860.	The whole Act.

(The Second Schedule. Enactments repealed.)

THE SECOND SCHEDULE—*contd.*

Year.	No.	Short title.	Extent of repeal.
1882	XIX	The Punjab University Act, 1882.	<p>Section 6.</p> <p>In section 7, sub-section (1).</p> <p>In section 8, in sub-section (1), the words after the word "Fellow" to the end of the sub-section, and in sub-section (2), the words from the word "appointed" to the words "this Act".</p> <p>In section 9, the words "under this Act".</p> <p>Sections 10 and 11.</p> <p>Section 12, except the last paragraph.</p> <p>Sections 13, 14, 15, 16 and 18.</p> <p>In section 20, the words "made or", "section six, clauses (b) and (c), and" and "under sections fourteen, fifteen and sixteen".</p> <p>In the Schedule, Part I.</p>
1884	I	The Indian Universities (Honorary Degrees) Act, 1884.	The whole Act.
1887	XVIII	The Allahabad University Act, 1887.	<p>Section 5.</p> <p>In section 6, sub-section (1).</p> <p>In section 7, sub-section (1), and in sub-section (2), the words after the word "Fellow" to the end of the sub-section.</p> <p>Sections 10, 11, 12, 13, 14, 15 and 17.</p> <p>In section 20, the words and figures "appointments made and", "under section 5, sub-section (1), clauses (b) and (c)", "under sections 14 and 15" and "under section 17".</p> <p>In the Schedule, Part I.</p>

## THE MADRAS COAST-LIGHTS ACT, 1904.

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CONTENTS.

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## SECTIONS.

1. Short title and extent.
2. Definitions.
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4. Collection of coast-light dues, and grant of receipt therefor.
5. Master to report arrival of vessel.
6. Ascertainment of tonnage.
7. Recovery of coast-light dues, expenses and costs.
8. No port-clearance to be granted until coast-light dues, expenses and costs are paid.
9. Master to specify on demand ports to or from which vessel is bound.
10. Penalty for evading payment of coast-light dues, expenses or costs.
11. Determination of dispute as to liability to pay coast-light dues, expenses or costs.
12. Saving for certain vessels.

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THE SCHEDULE.

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ACT No. IX OF 1904.<sup>1</sup>

[25th March, 1904.]

An Act to authorize the levy of dues on vessels for the provision of lights on the coast of the Presidency of Madras.

WHEREAS it is expedient to authorize the levy of dues on vessels for the provision of lights on the coast of the Presidency of Madras ; It is hereby enacted as follows :—

1. (1) This Act may be called the Madras Coast-lights Act, 1904.

Short title  
and extent.

(2) It extends to the whole of British India.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “Customs-collector” means a Customs-collector appointed under the <sup>2</sup> Sea Customs Act, 1878, and includes any person appointed by the Local Government to discharge the functions of a Customs-collector under this Act; and

VIII of 1878.

(b) “ton” means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships.

(1) For the purpose of providing lights on the coast of the Presidency of Madras, coast-light dues shall be paid in respect of every vessel of the burden of thirty tons or upwards making any such voyage as is described in the schedule.

Imposition  
of coast-light  
dues.

(2) The said dues shall be paid at such rates, not exceeding those respectively specified in the schedule, as the Governor of Fort St. George in Council may, with the previous sanction of the Governor General in Council, fix by notification<sup>3</sup> in the local official Gazette.

(3) The said coast-light dues shall be payable only at ports in British India other than Aden and shall be paid—

(a) in the case of a vessel clearing out of a port in British India, previous to the grant of a port-clearance ; and

(b) in the case of a vessel arriving from Aden or a port outside British India at a port in British India other than Aden, immediately upon her arrival in such port :

Provided that, when coast-light dues have been paid in the case of any vessel on account of the lights in the eastern or western group, no further

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1903, Pt. V, p. 9, for Report of Select Committee, see *ibid.*, 1904, Pt. V, p. 83 and for Proceedings in Council, see *ibid.*, 1903, Pt. VI, pp. 4, 188 ; *ibid.* 1904, Pt. VI, pp. 71 and 251.

<sup>2</sup> General Acts, Vol. II.

Fort St. George Gazette, 1904, Extraordinary, dated 23rd June, 1904, p

coast-light dues on account of lights in the same group shall be payable in respect of that vessel for a period of thirty days from the date on which such dues were paid.

*Explanation.*—The coast-lights on the east coast of the Presidency of Madras shall be deemed to constitute the eastern group of coast-lights, and the coast-lights on the west coast of the said Presidency to constitute the western group of coast-lights.

Collection of coast-light dues, and grant of receipt therefor.

4. The Customs-collector shall levy the coast-light dues payable under section 3, and shall grant to the person paying the same a receipt in writing under his hand specifying—

- (a) the port at which the coast-light dues are paid ;
- (b) the amount paid ;
- (c) the name, tonnage and other proper description of the vessel in respect of which the payment is made ; and
- (d) the group in respect of which the coast-light dues are paid.

Master to report arrival of vessel.

5. Within twenty-four hours after the arrival in any port of a vessel in respect of which coast-light dues are payable under section 3, the master shall give notice in writing of such arrival to the Customs-collector.

Ascertainment of tonnage.

6. In order to ascertain the tonnage of any vessel in respect of which coast light dues are payable under section 3, the following rules shall be observed, namely :—

- (a) Where the vessel is registered under any law for the time being in force in British India, the Customs-collector may require the owner or master, or any other person having possession of her register, to produce such register for inspection ; and, if any such owner, master or other person neglects or refuses to produce such register or otherwise to satisfy the Customs-collector as to what is the true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the Customs-collector may cause the vessel to be measured and the tonnage thereof to be ascertained ; and in such case the owner or master shall also be liable to pay the expenses of such measurement and ascertainment.
- (b) Where the vessel is not so registered, and the owner or master fails to satisfy the Customs-collector as to what is her true tonnage according to the mode of measurement prescribed by the law for regulating the measurement of British registered vessels for the time being in force, the Customs-collector shall cause the

vessel to be measured, and the tonnage thereof to be ascertained according to such mode as aforesaid ; and in such case the owner or master shall be liable to pay the expenses of such measurement and ascertainment.

7. Where the master of any vessel refuses or neglects to pay to the Customs-collector on demand the amount of any coast-light dues or expenses payable under this Act in respect of such vessel, the Customs-collector may seize the vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid ,

Recovery of coast-light dues, expenses and costs.

and in case any part of such dues or expenses, or of the costs of such seizure and detention, remains unpaid for the space of five days next after any seizure so made, the Customs-collector may cause the vessel or other thing so seized to be sold, and with the proceeds of the sale may satisfy the dues, expenses and costs (including the costs of sale) remaining unpaid, and shall, on demand, render the surplus (if any) to the master of the vessel.

8. The officer whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of the officer, the amount of all coast-light dues, expenses and costs payable in respect of the vessel under this Act, and of any fine imposed thereunder.

No port-clearance to be granted until coast-light dues, expenses and costs are paid.

9 The master of any vessel departing from or arriving in any port in British India, other than Aden, shall, on the demand of the Customs-collector, specify to what port the vessel is bound and at what port or ports (if any) the vessel intends to call, or from what port or ports she has come.

Master to specify on demand ports to or from which vessel is bound.

10. Whoever, being the master of a vessel, evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, shall be punishable with fine which may extend to two hundred rupees.

Penalty for evading payment of coast-light dues, expenses or costs.

11. Where any dispute arises as to whether any coast-light dues, expenses or costs are payable in respect of any vessel under this Act, or as to the amount of such dues, expenses or costs, the dispute shall, on application made in that behalf by either of the disputing parties, be heard and determined in the Presidency-towns of Calcutta, Madras and Bombay, by a Presidency Magistrate, and, elsewhere, by any Magistrate exercising at the place where the dispute arises powers not less than those of a Magistrate of

Determination of dispute as to liability to pay coast-light dues, expenses or costs.



Saving for  
certain  
vessels.

the second class ; and the decision of such Magistrate shall be final.

12. Nothing in this Act shall be deemed to apply to any vessel belonging to, or in the service of, His Majesty or the Government, or to any vessel of war belonging to any Foreign Prince or State.

## THE SCHEDULE.

(See section 3.)

Vessels.	Maximum rate per net registered ton.
<p>Class I.</p> <p>Steam-vessels departing from any port in the Presidency of Bombay, or from any port on the west coast of the South of India, and bound for or calling at any port on the east coast of the South of India ; or <i>vice versa</i>.</p>	<p>9 pies on account of the western, and 9 pies on account of the eastern, group of coast-lights</p>
<p>Class II.</p> <p>Steam-vessels departing from any port in the Presidency of Bombay, or from any port on the west coast of the South of India, bound for or calling at any port in India, east of the eighty-sixth meridian of Longitude E., and not calling at any port on the east coast of the South of India ; or <i>vice versa</i>.</p>	<p>9 pies on account of the western group of coast-lights.</p>
<p>Class III.</p> <p>Steam-vessels departing from any port in the Presidency of Bombay, or from any port on the west coast of the South of India, and bound for or calling at any port outside India east of the seventy-eighth meridian of Longitude E. ; or <i>vice versa</i>.</p>	<p>9 pies on account of the western group of coast-lights</p>
<p>Class IV.</p> <p>Steam-vessels calling at or departing from any port on the east coast of the South of India and not included in any other class</p>	<p>9 pies on account of the eastern group of coast-lights.</p>
<p>Class V.</p> <p>Steam-vessels departing from any port in the Presidency of Bombay, and bound for the port of Tellicherry or for any port in the Presidency of Madras north of the port of Tellicherry, or <i>vice versa</i>.</p>	<p>5 pies on account of the western group of coast-lights.</p>
<p>Class VI.</p> <p>Steam-vessels, not included in any other class, departing from any port in the Presidency of Bombay and bound for, or calling at, any port on the west coast of the South of India south of the port of Tellicherry ; or <i>vice versa</i>.</p>	<p>9 pies on account of the western group of coast-lights.</p>

THE SCHEDULE—*contd.*

Vessels.	Maximum rate per net registered ton.
<p style="text-align: center;">Class VII.</p> <p>Steam-vessels, not included in any other class, calling at more than one port on the west coast of the South of India, or at more than one port on the east coast of the South of India.</p>	<p>9 pies on account of the western or eastern group of coast-lights, as the case may be.</p>
<p style="text-align: center;">Class VIII.*</p> <p>Sailing-vessels . . . . .</p>	<p>Half the rate which would be chargeable as aforesaid if they were steam-vessels.</p>

\* For the purposes of this Schedule, the expression "South of India" means any part of India south of a line drawn from Baidur on the west, to Ganjam on the east, coast of India, and the expression "Presidency of Bombay" does not include Aden.

## THE CO-OPERATIVE CREDIT SOCIETIES ACT, 1904.

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ACT No. X OF 1904. <sup>1</sup>

[25th March, 1904.]

## An Act to provide for the constitution and control of Co-operative Credit Societies.

WHEREAS it is expedient to encourage thrift, self-help and co-operation among agriculturists, artisans and persons of limited means, and for that purpose to provide for the constitution and control of co-operative credit societies; It is hereby enacted as follows :—

*Preliminary.*Short title  
and extent.

1. (1) This Act may be called the Co-operative Credit Societies Act, 1904; and

Definitions.

(2) It extends to the whole of British India.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) “by-law” means a rule made by a society in the exercise of any power conferred by this Act, or by any rule made under this Act :

(b) “committee” means the governing body of a society to whom the management of its affairs is entrusted :

(c) “member” includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules made under this Act :

(d) “officer” includes a chairman, secretary, treasurer, member of committee, or other person empowered under the rules applying to any society or the by-laws thereof to give directions in regard to the business of the society :

(e) “Registrar” means a person appointed to perform the duties of a Registrar of Co-operative Credit Societies under this Act : and

(f) “society” means a co-operative credit society registered under this Act.

*Constitution.*Constitution  
of societies.

3. (1) A society shall consist of ten or more persons above the age of eighteen years :—

(a) residing in the same town or village or in the same group of villages, or,

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1903, Pt. V, p. 520; for Report of Select Committee, see *ibid.*, 1904, Pt. V, p. 65 and for Proceedings in Council, see *ibid.*, 1903, Pt. VI, pp. 170, 191; *ibid.*, 1904, Pt. VI, pp. 16, 22 and 251.

The Act has been declared to be in force in the Santhal Parganas by notification under s. 3 of the Santhal Parganas Settlement Regulation 1872 (III of 1872), Ben. Code, see Calcutta Gazette, 1905, Pt. I, p. 878.

## (Constitutions Registration.)

(b) subject to the sanction of the Registrar, consisting of members of the same tribe, class or caste.

(2) Societies shall be either rural or urban. In a rural society not less than four-fifths of the members shall be agriculturists. In an urban society not less than four-fifths of the members shall be non-agriculturists.

(3) When any question arises as to whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether two or more villages shall be considered to form a group, or whether any person belongs to a tribe, class or caste, the question shall be decided by the Registrar, whose decision shall be final.

4. The members of a society shall be—

(a) persons joining in the application mentioned in section 6, sub-section (1), and registered as a society under sub-section (2) of the same section ;

Members of society.

(b) persons qualified in accordance with the requirements of section 3 and admitted by the society in accordance with the provision of this Act and with the by-laws of the society ;

Provided that a person so admitted shall not exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules made under this Act or the by-laws of the society.

*Registration.*

5. The Local Government may appoint a person to be Registrar of Co-operative Credit Societies for the Province or any portion of it.

The Registrar.

6. (1) Any ten or more persons qualified in accordance with the requirements of section 3 and agreeing each to make such payment or acquire such interest as aforesaid, may apply to the Registrar to be registered as a rural or an urban society, as the case may be, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the proposed society as the Registrar may require.

Registration and incorporation of societies.

(2) If the Registrar is satisfied that the persons proposing to form a society are qualified in accordance with the requirements of section 3 and have complied with the provisions of this Act and with the rules made thereunder he may, if he thinks fit, register the society accordingly, and the society shall thereupon become and be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, moveable or immovable, to enter into contracts, to institute and defend civil suits and to do all things necessary for the purposes of its constitution.

*(Management.)*

(3) Every society shall have an address, registered in accordance with the rules made under this Act, to which all notices and communications may be sent.

(4) The registered name of a society shall distinguish whether the society is rural or urban, and, if the liability of the members is limited, the word "limited" shall be added to such name.

(5) No charge shall be made for registration under this section.

*Management.*

Liability of  
members.

7. The liability of each member of a society for the debts of the society shall be as follows :—

(a) in the case of a rural society, such liability shall, save with the special sanction of the Local Government, be unlimited ;

(b) in the case of an urban society, such liability shall be unlimited limited as may be provided by the by-laws or by any rules made under this Act

Disposal of  
profits.

8. (1) No dividend or payment on account of profits shall be paid to a member of a rural society, but all profits made by such a society shall be carried to a fund (to be called the reserve fund) :

Provided that, when such reserve fund has attained such proportion to the total of the liabilities of the society, and when the interest on loans to members has been reduced to such rates, as may be determined by the by-laws or rules made under this Act, any further profits of the society, not exceeding three-fourths of the total annual profits, may be distributed to members by way of bonus.

(2) Not less than one-fourth of the profits in each year of an urban society shall be carried to a fund (to be called the reserve fund) before any dividend or payment on account of profits is paid to the members or any of them.

Restrictions  
on borrowing.

9. A society may receive deposits from members without restriction, but it may borrow from persons who are not members only to such extent and under such conditions as may be provided by its by-laws or by rules made under this Act.

Restrictions  
on loans.

10. (1) A society shall make no loan to any person other than a member :

Provided that, with the consent of the Registrar, a society may make loans to a rural society.

(2) Save with the permission of the Registrar to be given by general order in the case of each society, a rural society shall not lend money on the security of moveable property.

(3) The Local Government may, by general or special order, prohibit or

*(Management. Shares and Interests of Members.)*

restrict the lending of money on mortgage of immoveable property or any kind thereof by any society or class of societies.

11. A society may deposit its funds in the Government Savings Bank or with any banker or person acting as a banker approved for this purpose by the Registrar. Deposit of society's funds.

*Shares and Interests of Members.*

12. Where the liability of the members of a society is limited by shares a member shall not hold more than such portion of the capital of the society, subject to a maximum of one-fifth, as may be prescribed by any rules made under this Act : Limit on capital held by member.

Provided that no member of such a society shall hold more shares than represent a nominal value of one thousand rupees.

13. (1) Where the liability of the members of a society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, only have one vote as a member in the affairs of the society. Votes of members.

(2) Where the liability of the members of a society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws of the society.

14. (1) A member shall not transfer any share held by him or his interest in the capital of the society or any part thereof, unless he has held such share interest for one year at least. Restrictions on transfer of share or interest.

(2) The share or interest of a member in the capital of a society shall not be transferred or charged, unless the to society or to a member of the society and subject to any conditions as to maximum holding prescribed by this Act or by the by-laws or by any rules made under this Act.

15. Subject to the provisions of section 20, the share or interest of a member in the capital of a society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee nor a Shares or interest not liable to attachment.

XIV of 1882. Receiver appointed under Chapter XX of the Code of Civil Procedure shall be entitled to or have any claim on such share or interest.

16. On the death of a member, the society may pay to or transfer to the credit of the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, such person as may appear to the Committee to be entitled to receive the same as heir or legal representative of the deceased member, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws and all Transfer of interest on death of member.

<sup>1</sup> See now the Provincial Insolvency Act, 1907 (III of 1907) section 26 (2) of that Act, *infra*.



*(Shares and Interests of Members. Priority of Society's claim against a member. Audit, Inspection and Inquiry.)*

moneys due to him from the society, and the society shall thereupon be absolved from all liability in respect of such share or interest or other moneys as aforesaid.

Liability of past member.

17. The liability of a past member for the debts of the society as they existed at the time when he ceased to be a member shall continue for a period of one year from the date of his ceasing to be a member.

Liability of the estates of deceased member.

18. The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of the society as they existed at the time of his decease.

*Priority of Society's claim against a member.*

Prior claim of society as against crops, agricultural produce, cattle, implements and raw material.

19. Subject to any prior claim of the Government in respect of land-revenue or any money recoverable as land-revenue or of a landlord in respect of rent or any money recoverable as rent, a society shall be entitled in priority to other creditors to enforce its claim—

(a) upon the crops or other agricultural produce of a member or past member at any time within a year from the date when seed or manure was advanced or money for the purchase of seed or manure was lent to such member or past member, in respect of the unpaid portion of such advance or loan :

(b) upon any cattle, agricultural or industrial implements or raw material for manufactures, supplied by the society or purchased in whole or in part with money lent by the society, in respect of the outstanding liability on account of such supply or loan.

Charge and set-off in respect of shares or interest of member.

20. A society shall have a charge upon the shares or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set-off any sum credited or payable to a member or past member in or towards payment of any such debt.

*Audit, Inspection and Inquiry.*

Audit, inspection and inquiry.

21. (1) The Registrar shall audit the accounts of each society once at least in every year.

(2) No charge shall be made in respect of any audit made under sub-section (1)

(3) The audit under sub-section (1) shall include an examination of over-due debts, if any, and a valuation of the assets and liabilities of the society.

(4) The Registrar, the Collector or any person authorized in this behalf by the Registrar or the Collector may at any time inspect the book accounts.

*(Audit, Inspection and Inquiry. Dissolution of a Society.)*

papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection shall require.

(5) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the Committee or not of less than one-third of the members, hold an inquiry into the constitution, working and financial condition of a society, and all officers and members of the society shall furnish such information in regard to the affairs of the society as the Registrar may require.

(6) Where an inquiry is held under sub-section (5), the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members demanding an inquiry and the officers or former officers of the society.

(7) Any sum awarded by way of costs under sub-section (6) may be recovered, on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable resides for the time being, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person.

22. A copy of any entry in a book of a society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by rules made under this Act, be received, in any suit to recover a debt due to the society, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

Mode of  
proof of  
entries in  
societies'  
books.

*Dissolution of a Society.*

23. (1) If the Registrar, after holding an inquiry under section 21, sub-section (5), or on receipt of an application made by three-fourths of the members of a society, is of opinion that a society ought to be dissolved, he may cancel or may refuse to cancel the registration of the society. Dissolution.

(2) Any member of a society may, within two months from the date of an order made under sub-section (1), appeal from such order to the Local Government.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period. Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the Local Government.

*(Dissolution of a Society.)*

(4) Where an order made under sub-section (1) cancelling the registration of a society takes effect, the society shall cease to exist as a corporate body.

Cancellation  
of registra-  
tion of  
society.

24. (1) Where the registration of a society is cancelled under section 23, the Registrar may appoint a competent person to be liquidator of the society.

(2) A liquidator appointed under sub-section (1) shall have power to institute and defend suits on behalf of the society by his name of office, and shall also have power—

- (a) to sue for and recover any sums of money due to the society at the date of such cancellation ;
- (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society ;
- (c) to investigate all claims against the society, and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;
- (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ; and
- (e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any rules of procedure made under this Act, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the <sup>1</sup> Code of Civil Procedure.

XIV of 1882.

(4) The rules may provide for an appeal to the Court of the District Judge from any order made by a liquidator under this section.

(5) Orders made under this section may be enforced as follows :

- (a) When made by a liquidator, by any Civil Court having local jurisdiction in the same manner as the decree of such Court ;
- (b) when made by the Court of the District Judge in the matter of any such appeal as aforesaid, in the same manner as a decree of such Court made in any suit pending therein.

(6) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect to any matter connected with the dissolution of a society under this Act.

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<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act V of 1908), *infra*.

*(Exemptions from Taxation. Debts due to Government.)**Exemptions from Taxation.*

25. (1) The Governor General in Council, by notification<sup>1</sup> in the Gazette of India, may in the case of any society or class of society, remit—
- (a) the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits ;
- (b) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable ;
- (c) any fee payable under the law of registration for the time being in force.
- (2) A notification exempting any society from the fees referred to in sub-section (1), clause (c), may provide for the withdrawal of such exemption.

Power to exempt from income-tax, stamp-duty and registration fees.

*Debts due to Government.*

26. (1) All sums due from a society or from an officer or member or past member of a society as such to the Government, including any costs awarded to the Government under section 21, sub-section (6), may be recovered in the same manner as arrears of land-revenue.
- (2) Sums due from a society to Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society ; secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability ; and, thirdly, in the case of other societies, from the members.

Recovery of sums due to Government.

*Rules.*

27. (1) The Local Government may, for the whole or any part of the Province and for any society or class of societies, make rules<sup>2</sup> to carry out the purposes of this Act.

Rules.

<sup>1</sup> For notification remitting the tax, duty and fees mentioned in clauses (a), (b) and (c) payable by members of societies registered under the Act, see Gazette of India, 1904, Pt. I, p. 739.

<sup>2</sup> For rules made by the Government of—

(1) Bengal, see Calcutta Gazette, 1905, Pt. I, p. 1451 ; 1909, Pt. I, p. 280 ;

(2) Bombay, see Bombay Govt Gazette, 1905, Part I, p. 132 ;

(3) Burma, see Burma Gazette, 1907, Pt. I, p. 90 ;

(4) Central Provinces, see C. P. Gazette, 1908, Pt. I, p. 6 ;

(5) Coorg, see Coorg District Gazette, 1905, Pt. I, p. 88, *ibid*, 1906, Pt. I, p. 78, *ibid*, 1907, Pt. I, p. 4 ;

(6) Eastern Bengal and Assam, see Eastern Bengal and Assam Gazette, 1908, Part II, p. 1565 ;

(7) Madras, see Madras, R. and O. Fort St. George Gazette, 1907, Pt. I, p. 955, *ibid*, 1908, Pt. I, p. 394 ;

(8) North-West Frontier Province, see Gazette of India, 1906, Pt. II, p. 1152, *ibid*, 1907, Pt. II, p. 107 ;

(9) Punjab, see Punjab Gazette, 1906, Pt. I, 584 ;

(10) United Provinces, see United Provinces Gazette, 1905, Pt. I, pp. 775, 777, *ibid*, 1907, Pt. I, p. 377 ; U. P. R. and O.

*(Rules.)*

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the forms to be used in applying for the registration of a society and the procedure in the matter of such applications ;
- (b) prescribe the conditions to be complied with by persons applying for registration and by persons applying for admission or admitted as members, and provide for the election and admission of members from time to time, and the amount of payment to be made and interests to be acquired before exercising rights of membership ;
- (c) provide for the withdrawal and expulsion of members and for the payments to be made to members who withdraw or are expelled and for the liabilities of past members ;
- (d) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ;
- (e) subject to the provisions of section 12, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;
- (f) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent to an individual member ;
- (g) prescribe the proportion to the total liabilities to be attained by the reserve fund and the rate to which interest on loans to members is to be reduced, before profits may be distributed to the members of a rural society ;
- (h) regulate the manner in which capital may be raised by means of shares or debentures or otherwise ;
- (i) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings ;
- (j) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers ;
- (k) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the sanction to be required to such making, alteration or abrogation ;

*(Miscellaneous.)*

- (l) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets and liabilities of a society ;
  - (m) provide for the persons by whom and the form in which copies of entries in books of societies may be certified ;
  - (n) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares ;
  - (o) provide for the rate at which interest may be paid on deposits, for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;
  - (p) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision, or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators ;
  - (q) prescribe the conditions to be complied with by a society applying for the financial assistance of Government ; and
  - (r) determine in what cases an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals.
- (3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.
- (4) All rules made under this section shall be published in the local official Gazette and on such publication shall have effect as if enacted in this Act.
- (5) A copy of the rules relating to a society and of the by-laws thereof for the time being in force shall be kept open to inspection at all reasonable times free of charge at the registered address of the society.

*Miscellaneous.*

VI of 1882.

28. The provisions of the <sup>1</sup> Indian Companies Act, 1882 shall not apply to societies registered under this Act.

Indian Companies Act, 1882, not to apply.

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<sup>1</sup> General Acts, Vol. III.

(Miscellaneous.)

Special power  
to Local Gov-  
ernment to  
register any  
association  
under Act.

29. (1) Notwithstanding anything contained in this Act, the Local Government may, by <sup>1</sup>special order in each case, and subject to such conditions as it may impose, permit any association of not less than ten persons above the age of eighteen years to be registered as a rural or an urban society under this Act.

(2) A society so registered shall be subject to the provisions of this Act to the same extent as any other society :

Provided that the Local Government may at any time by order<sup>2</sup> exempt such society from any of such provisions, or may direct that they shall apply to such society with such modifications as may be specified in the order.

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<sup>1</sup> For instance of such an order, *see* Central Provinces Gazette, 1907, Pt. I, p. 315.

<sup>2</sup> For instance of such an exemption, *see* Central Provinces Gazette, 1907, Pt. I, p. 315.

ACT No. XI OF 1904.<sup>1</sup>

[25th March, 1904.]

An Act to revive and continue section 8B of the Indian Tariff Act, 1894.

VIII of 1894. WHEREAS it is expedient to revive and continue the duration of section 8B  
VIII of 1902. of the<sup>2</sup> Indian Tariff Act, 1894, which was added by section 2 of the<sup>3</sup> Indian  
Tariff (Amendment) Act, 1902,<sup>1</sup> but expired in virtue of sub-section (2) of  
section 1 of the latter Act, from the thirty-first day of August, 1903; It is  
hereby enacted as follows:—

1. Section 8B of the Indian Tariff Act, 1894, is hereby revived and  
continued in force with effect from the first day of April, 1904.

Revival of  
section 8B,  
Act VIII,  
1894.

2. Sub-section (2) of section 1 of the Indian Tariff (Amendment) Act,  
1902, is hereby repealed.

Repeal of  
section 1 (2),  
Act VIII,  
1902.

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1904, Pt V, p. 87 and for Proceedings in Council, *ibid*, Pt. VI, pp. 73 and 265.

<sup>2</sup> General Acts, Vol. IV.

<sup>3</sup> General Acts, Vol. V.



ACT No. XIII OF 1904.<sup>1</sup>

[9th September, 1904.]

## An Act further to amend the Indian Articles of War.

WHEREAS it is expedient further to amend the <sup>2</sup>Indian Articles of War; V of 1869.  
It is hereby enacted as follows :

Short title.

1. This Act may be called the Indian Articles of War (Amendment) Act, 1904.

Addition to  
article, 89A,  
Act V,  
1869.

2. To article 89A, sub-article (1), of the Indian Articles of War the V of 1869.  
following clause shall be added, namely :

‘ (e) in the case of any person subject to these Articles who is serving out of India, not under the orders of the Commander-in-Chief in India, in any station beyond the seas as defined in section 190, clause (25), of the <sup>3</sup>Army Act, the officer who convenes the court-martial or who has authority to convene such court-martial.’

44 & 45  
Vict., c. 53.

Repeal of  
part of  
article 91  
and Second  
Appendix,  
Act V,  
1869.

3. In the said Articles—

(a) the brackets and figure “(1)” in article 91, and sub-article (2) of the same article, and

(b) the Second Appendix,

shall be repealed.

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1904, Pt. V, p. 93 and for Proceedings in Council, *ibid*, Pt. VI, pp. 368, and 370.

<sup>2</sup> General Acts, Vol. II.

<sup>3</sup> Coll. Stat., Vol. II.

ACT No. XV of 1904.<sup>1</sup>

[28th October, 1904.]

An Act further to amend the <sup>2</sup> Indian Stamp Act, 1899.

II of 1899. WHEREAS it is expedient further to amend the <sup>3</sup> Indian Stamp Act, 1899; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Stamp (Amendment) Act, 1904. Short title and extent.

(2) It extends to the whole of British India, inclusive of Upper Burma, British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

II of 1899. 2. In section 2 of the Indian Stamp Act, 1899 (hereinafter referred to as "the said Act"),— Amendment of section 2, Act II, 1899.

(a) after the definition of "lease" in clause (16) the following definition shall be inserted, namely :—

"(16A) 'marketable security' means a security of such a description as to be capable of being sold in any stock market in British India or in the United Kingdom;" and

(b) to the definition of "settlement" in clause (24) the following word shall be added, namely :—

"and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition."

3. After section 23 of the said Act the following section shall be added namely :—

"23A. (1) Where an instrument (not being a promissory note or bill of exchange)—

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 5 (b) of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty."

Addition of new section 23A, after section 23, Act II, 1899.

Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1904, Pt. V, p. 80, for Report of Select Committee, *ibid*, p. 97 and for Proceedings in Council, *ibid*, Pt. VI, pp. 25, 373.

The Act has been declared to be in force in the sub-division of Angul by notification under s. 5 of the Angul District Regulation, 1894 (I of 1894), Ben Code, see Calcutta Gazette, 1905, Pt. I, p. 1837.

<sup>2</sup> General Acts, Vol. V.

Amendment  
of section  
26, Act II,  
1899.

4. In section 26 of the said Act, for the first proviso the following proviso shall be substituted, namely :—

“ Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(a) when the lease has been granted by or on behalf of the Secretary of State in Council, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the said Secretary of State in Council under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year ;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease.”

Amendment  
of section  
29, Act II,  
1899.

5. In section 29, clause (a), of the said Act, for the words and figure “No 6 (Agreement to Mortgage)”, the words and figure “No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge)” shall be substituted.

Amendment  
of section 40  
(1) (b), Act  
II, 1899.

6. In section 40, sub-section (1), clause (b), of the said Act, before the words “ten times the amount” the words “an amount not exceeding” shall be inserted.

Amendment  
of section 56  
(1), Act II,  
1899.

7. In section 56, sub-section (1), of the said Act, after the word and figure “Chapter V” the following shall be inserted, namely :—

“and under clause (a) of the first proviso to section 26.”

Amendments  
of Schedule I,  
Act II, 1899.

in Schedule I of the said Act the following amendments shall be made namely :—

(1) for Article No. 6 the following Article shall be substituted, namely :—

“6. AGREEMENT RELATING TO DEPOSIT OF  
TITLE-DEEDS, PAWN OR PLEDGE, that is  
to say any instrument evidencing an  
agreement relating to—

(1) the deposit of title-deeds or instru-  
ments constituting or being evi-  
dence of the title to any property  
whatever (other than a marketable  
security), or

(2) the pawn or pledge of moveable pro-  
perty,  
where such deposit, pawn or pledge has  
been made by way of security for the  
repayment of money advanced or to be  
advanced by way of loan or an existing or  
future debt—

(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement ;	The same duty as a Bill of Exchange [No. 13 (b)] for the amount secured.
(b) if such loan or debt is repayable not more than three months from the date of such instrument.	Half the duty payable on a Bill of Exchange [No. 13 (b)] for the amount secured.

*Exemption.*

Instrument of pawn or pledge of goods if unattested ” ;

(2) in the entry immediately following Article No. 28, for the words and figure “ See Agreement by way of equitable mortgage (No. 6) ” the words and figure “ See Agreement relating to Deposit of Title-deeds, Pawn or Pledge (No. 6) ” shall be substituted ;

(3) the entry “ Equitable Mortgage ” following Article No. 30 shall be omitted ;

(4) in Article No. 40—

(a) for the words and figure “ an Agreement to mortgage (No. 6) ” the words and figure “ an Agreement relating to Deposit of Title-deeds, Pawn or Pledge (No. 6) ” shall be substituted,

(b) from clause (b) the words “ at the time of execution ” shall be omitted, and

(c) the exemption “ (3) Instrument of pledge or pawn of goods if unattested ” shall be omitted ;

(5) in Article No. 41, for the entry “ Four annas ” each time it occurs in the second column opposite clause (b), the entry “ Two annas ” shall be substituted ;

(6) after Article No. 46 the following entry shall be inserted, namely :—

“ Pawn or pledge.—See Agreement relating to Deposit of Title-deeds, Pawn or Pledge (No. 6). ” ; and

(7) in Article No. 55, after the word “ instrument ” the following parenthesis shall be inserted, namely :—

“ (not being such a release as is provided for by section 23A). ”

ACT No. XVI OF 1904.<sup>1</sup>

[28th October, 1904.]

## An Act to repeal certain words in the Sea Customs Act, 1878.

WHEREAS it is expedient to repeal certain words in the <sup>2</sup> Sea Customs Act, VIII of 1878. 1878, It is hereby enacted as follows :—

Short title.

1. This Act may be called the Sea Customs (Amendment) Act, 1904.

Repeal of  
part of sec-  
tion 18 (e),  
Act VIII,  
1878.

2. The words “or being a colourable imitation of”, in clause (e) of section 18 of the <sup>2</sup>Sea Customs Act, 1878, as amended by section 10 of the <sup>3</sup> Indian VIII of 1878.  
Merchandise Marks Act, 1889, are hereby repealed. IV of 1889.

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<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1904, Pt. V, p 101 and for Proceedings in Council, see *ibid*, Pt. VI, pp. 372 and 374.

<sup>2</sup> General Acts, Vol. II.

<sup>3</sup> General Acts, Vol. IV.

ACT No. I OF 1905.<sup>1</sup>

[3rd February, 1905.]

An Act further to amend the Local Authorities' Loan Act, 1879.

**XI of 1879.** WHEREAS it is expedient further to amend the <sup>2</sup> Local Authorities' Loan Act, 1879; It is hereby enacted as follows :—

1. This Act may be called the Local Authorities' Loan (Amendment) Act, Short title. 1905.

**XI of 1879.** 2. In clause (a) of the proviso to section 8 of the <sup>2</sup> Local Authorities' Loan Act, 1879, after the words "Port of Madras" the words "or the Commissioners for the Port of Rangoon" shall be inserted.

Amendment  
of Act XI of  
1879, sec-  
tion 8.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1905, Pt V, p. 3 and for Proceedings in Council, see *ibid*, Pt VI, pp. 2 and 5

<sup>2</sup> General Acts, Vol III

ACT NO. II OF 1905.<sup>1</sup>

[10th February, 1905.]

## An Act to validate action taken under the Indian Universities Act, 1904.

WHEREAS the <sup>2</sup> Indian Universities Act, 1904, authorizes the Chancellor of VIII of 1904. each of the Indian Universities to make directions, declarations and orders with a view to the constitution of the Body Corporate and the appointment of the Provisional Syndicate thereof;

And whereas various directions, declarations and orders have been made in pursuance of the said authority, and Bodies Corporate and Provisional Syndicates have been constituted and appointed thereunder;

And whereas doubts have been raised as to the construction of the said Act and as to the validity of some of the said directions, declarations and orders and as to the validity of the constitution and appointment of some of the said Bodies Corporate and Provisional Syndicates, and it is expedient to remove such doubts;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Universities (Validation) Act, 1905.

Validation of directions, declarations and orders.

2. All directions, declarations and orders made as aforesaid, shall be deemed to have been duly made under the <sup>2</sup> Indian Universities Act, 1904. VIII of 1904.

Validation of constitution and appointment of Bodies

3. The Bodies Corporate and Provisional Syndicates constituted and appointed as aforesaid shall be deemed to have been duly constituted and appointed under the said Act.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1905, Pt. V, p. 13 and for Proceedings in Council, see *ibid*, Pt. VI, pp. 6 and 14.

<sup>2</sup> *Supra*.

## THE INDIAN PAPER CURRENCY ACT, 1905.

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*Transfer of Office of Issue from Allahabad to Cawnpore.*

29. Special provision for payment of currency notes issued prior to closing of Allahabad office.

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**THE SCHEDULE.—ENACTMENTS REPEALED.**

(Preliminary. The Department of Paper Currency.)

## ACT No. III of 1905.

[22nd March, 1905.]

## An Act to consolidate and amend the law relating to the Government Paper Currency.

WHEREAS it is expedient to consolidate and amend the law relating to the Government Paper Currency ; It is hereby enacted as follows :—

*Preliminary.*

1. (1) This Act may be called the Indian Paper Currency Act, 1905 ; Short title and extent.

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

*The Department of Paper Currency.*

2. There shall continue to be a department of the public service, to be called the Department of Paper Currency, whose function shall be the issue of promissory notes of the Government of India, to be called currency notes payable to bearer on demand, and of such denominational values not being less than 5 rupees as the Governor General in Council may direct. Department of Paper Currency for issue of currency notes.

3. At the head of the Department there shall be an officer to be called the Head Commissioner of Paper Currency and there shall be three other officers to be called, respectively,— Head Commissioner and Commissioners of Paper Currency.

- (a) the Commissioner of Paper Currency for Madras,
- (b) the Commissioner of Paper Currency for Bombay, and
- (c) the Commissioner of Paper Currency for Rangoon.

4. The Governor General in Council may, by notification in the Gazette of India,—

- (a) establish districts to be called circles of issue, four of which circles shall include the towns of Calcutta, Madras, Bombay and Rangoon, respectively ;
- (b) appoint in each circle some one town<sup>2</sup> to be the place of issue of currency notes as hereinafter provided ;
- (c) establish in each such town an office or offices of issue ;

Power to establish circles of issue, offices of issue and currency agencies.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1905, Part V, p. 9, for Report of Select Committee, see *ibid*, p. 17 and for Proceedings in Council, see *ibid*, Pt. VI, pp. 2, 35 and 42.

This Act has been declared to be in force in the Angul District by notification under s. 5 of the Angul District Regulation, 1894 (I of 1894), Ben. Code. see Calcutta Gazette, 1907, Pt. I, p. 2077.

<sup>2</sup> Cawnpore has been appointed with effect from 1st February 1908 instead of Allahabad to be the place of issue for the circle comprising the territories administered by the Lieutenant-Governor of the United Provinces of Agra and Oudh, Gazette of India, 1908, Part I, p. 50.

(The Department of Paper Currency. Supply and Issue of Currency Notes.)

(d) establish in any town situate in any circle an office, to be called a currency agency ; and

(e) declare that, for the purposes of this Act, any town (other than Calcutta, Madras, Bombay or any town situate in Burma) in which an office of issue is established, shall be deemed to be situate within such presidency as is specified in the order.

Commissioners and Deputy Commissioners of Paper Currency and Currency Agents.

5. (1) The Head Commissioner of Paper Currency shall be the officer in charge of the circle of issue which includes the Town of Calcutta, and the Commissioners of Paper Currency for Madras, Bombay and Rangoon shall be the officers in charge of the circles of issue which include the towns of Madras, Bombay and Rangoon, respectively.

(2) For each other circle of issue there shall be an officer in charge to be called the Deputy Commissioner of Paper Currency, and for each Currency Agency an officer to be called the Currency Agent.

Subordination of officers.

6. For the purposes of this Act,—

(a) the Commissioners of Paper Currency for Madras, Bombay and Rangoon, and the Deputy Commissioners of Paper Currency in the Presidency of Fort William in Bengal, shall be subordinate to the Head Commissioner of Paper Currency ;

(b) the Deputy Commissioners of Paper Currency in the Presidencies of Fort St. George and Bombay, and in the Province of Burma, shall be subordinate to the Commissioners of Paper Currency for Madras, Bombay, and Rangoon, respectively ; and

(c) the Currency Agent at any town shall be subordinate to the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of Paper Currency for the circle of issue in which that town is situate.

Appointment of officers.

7. All officers under this Act shall be appointed by the Governor General in Council.

#### *Supply and Issue of Currency Notes.*

Head Commissioner, Commissioners and Deputy Commissioners to provide and distribute currency notes.

8. (1) The Head Commissioner shall provide currency notes of the denominational values prescribed under this Act and shall supply the Commissioners and the Currency Agents subordinate to him and the Deputy Commissioners, with such notes as they need for the purposes of this Act.

(2) The Commissioners and Deputy Commissioners shall supply the Currency Agents subordinate to them, respectively, with such notes as those Agents need for the purposes of this Act.

(3) Every such note other than a currency note of the denomination

(Supply and Issue of Currency Notes. Currency Notes where legal tender and where payable.)

value of five rupees <sup>1</sup>\* \* \* \* shall bear upon it the name of the town from which it is issued.

9. The name of the Head Commissioner, of one of the Commissioners, of a Deputy Commissioner, or of some other person authorized by the Head Commissioner, or by one of the Commissioners, to sign currency notes, shall be subscribed to every such note and may be impressed thereon by machinery, and when so impressed shall be deemed to be a valid signature.

Signatures to currency notes.

10. The officers in charge of circles of issue shall, in their respective circles on the demand of any person, issue, from the office or offices of issue established in their respective circles, currency notes of the denominational values prescribed under this Act, in exchange for the amount thereof—

Issue of currency notes for silver or gold coins by officers in charge of circles.

(a) in rupees or half rupees or in gold coin which is legal tender under the <sup>2</sup> Indian Coinage Act, 1870, or

(b) in rupees made and declared to be a legal tender under the provisions of the <sup>3</sup> Native Coinage Act, 1876.

XXIII of 1870.

IX of 1876.

11. Any Currency Agent to whom currency notes have been supplied under section 8 may, if he thinks fit, on the demand of any person, issue from his agency any such notes in exchange for the amount thereof in any coin specified in section 10.

Issue of currency notes for silver or gold coin by currency Agents.

12. The officers in charge of circles of issue shall, on the requisition of the Comptroller General, issue to any Government Treasury currency notes in exchange for gold coin which is not legal tender under the <sup>2</sup> Indian Coinage Act, 1870, or for gold bullion at the rate of one rupee for 7·53344 grains troy of fine gold.

Issue to Government Treasuries of currency notes for gold coin not legal tender or gold bullion.

XXIII of 1870.

13. If the Secretary of State for India in Council shall consent to hold in gold coin or bullion, or in silver bullion or in securities of the kinds mentioned in section 20, the equivalent in value to notes issued in India as a reserve to secure the payment of such notes, the Governor General in Council may from time to time direct that currency notes shall be issued to an amount equal to the value of the coin, bullion and securities so held by the Secretary of State for India in Council.

Issue of currency notes for certain gold coin or gold or silver bullion or securities held by Secretary of State.

*Currency Notes where legal tender and where payable.*

<sup>4</sup> 14. A currency note of the denominational value of five rupees, shall be a legal tender in any place in British India, and

Currency notes where legal tender.

a currency note of any denominational value exceeding five rupees shall be a legal tender at any place within the circle from which the note was issued,

<sup>1</sup> The words "issued from any town not situate in Burma" were repealed by the Indian Paper Currency (Amendment) Act, 1909 (II of 1909); Appendix, *infra*.

<sup>2</sup> See now the Indian Coinage Act, 1906 (III of 1906), *infra*.

<sup>3</sup> General Acts, Vol. II.

<sup>4</sup> Ss. 14 and 15 were substituted by s. 3 of the Indian Paper Currency (Amendment) Act, 1909 (II of 1909), Appendix, *infra*.

(*Currency Notes where legal tender and where payable.  
Reserve.*)

for the amount expressed in the note, in payment or on account of—

- (a) any revenue or other claim, to the amount of five rupees or upwards due to the Government of India, and
- (b) any sum of five rupees or upwards, due by the Government of India or by any body corporate or person in British India :

Provided that no currency note shall be deemed to be a legal tender by the Government of India at any office of issue.

Currency  
notes where  
payable.

<sup>1</sup> 15. A currency note shall be payable at the following offices of issue, namely :—

- (a) a currency note of the denominational value of five rupees, at any office of issue ;
- (b) a currency note of any denominational value exceeding five rupees, at an office of issue in the town from which it was issued and also, unless issued from any town in Burma, at an office of issue in the Presidency-town of the Presidency within which such town is situate.

Currency  
notes issued  
from  
currency  
agencies  
where  
deemed to be  
issued.

16. For the purposes of sections 14 and 15, currency notes issued from any currency agency shall be deemed to have been issued from the town appointed under section 4 to be the place of issue in the circle of issue in which that agency is established.

*Reserve.*

Reserve coin,  
bullion and  
securities to  
be equal to  
amount of  
currency  
notes in  
circulation.

17. The whole amount of currency notes at any time in circulation shall not exceed the total amount represented by the sovereigns, half sovereigns, rupees, half rupees and gold bullion, and the sum expended in the purchase of the silver bullion and securities, which are for the time being held by the Secretary of State for India in Council and by the Governor General in Council as a reserve to provide for the satisfaction and discharge of the said notes, and the said notes shall be deemed to have been issued on the credit of the Government of India as well as on the security of the said coin, bullion and securities :

Provided that, for the purposes of this section, currency notes which have not been presented for payment, in the case of notes of any denominational value not exceeding one hundred rupees within forty years, and in the case of notes of any denominational value exceeding one hundred rupees within

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<sup>1</sup> See note to s. 14, *supra*.

one hundred years, from the first day of April following the date of their issue shall be deemed not to be in circulation :

Provided further that all notes which are declared under the first proviso to this section not to be in circulation shall be deemed to have been issued on the credit of the Government of India and shall, if subsequently presented for payment, be paid from the revenues of the Government of India.

18. Subject to the provisions of section 17, the Governor General in Council may at any time, if he thinks it expedient, convert any of the coin or bullion for the time being held by him as a part of the reserve into coin of any of the kinds mentioned in section 10 or into gold or silver bullion.

Power to dispose of coin and bullion in reserve.

19. If any coin or bullion held by the Secretary of State for India in Council or by the Governor General in Council as part of the reserve is transmitted by the Secretary of State for India in Council to the Governor General in Council or by the Governor General in Council to the Secretary of State for India in Council, it shall be deemed during the period of transmission to remain part of the reserve referred to in section 17.

Coin and bullion to remain part of reserve during transit between England and India

20. The securities mentioned in section 17 shall be securities of the United Kingdom of Great Britain and Ireland or of the Government of India, or securities issued by the Secretary of State for India in Council under the authority of Act of Parliament and charged on the revenues of India, and the value of them at the price at which they are purchased shall not exceed one hundred and twenty millions of rupees :

Nature and value of securities which may form reserve.

Provided that the value at such price as aforesaid of such of the said securities as are not securities of the Government of India shall at no time exceed twenty millions of rupees.

21. The securities purchased by the Governor General in Council shall be securities of the Government of India, and shall be held by the Head Commissioner and the Master of the Mint at Calcutta, or of such other Mint as the Governor General in Council may direct in this behalf, in trust for the Secretary of State for India in Council.

Trustees of Indian securities purchased under Act.

22. (1) The Head Commissioner may, at any time, when ordered so to do by the Governor General in Council, sell and dispose of any of the securities held under section 21.

Power to sell and replace Indian securities.

(2) For the purpose of effecting such sales, the Master of the Mint at Calcutta or of such other Mint as aforesaid shall, on a request in writing from the Head Commissioner, at all times sign and endorse the securities, and the Head Commissioner, if so directed by the Governor General in Council, may purchase securities of the Government of India to replace such sales.

*(Reserve. Private Bills payable to Bearer on Demand. Supplementary Provisions.)*

Account of  
interest on  
securities.

23. An account showing the amount of the interest accruing on the securities held as part of the reserve under this Act, and the expenses and charges incidental thereto, shall be rendered annually by the Head Commissioner to the Governor General in Council and published annually in the Gazette of India.

*Private Bills payable to Bearer on Demand.*

Prohibition  
of issue of  
private bills  
or notes  
payable to  
bearer on  
demand.

24. No person in British India shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand, of any such person :

Provided that cheques or drafts, payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty for  
issuing such  
bills or  
notes and  
institution of  
prosecutions.

25. (1) Any person contravening the provisions of section 24 shall, on conviction by a Presidency Magistrate or a Magistrate of the first class, be punishable with a fine equal to the amount of the bill, hundi, note or engagement in respect whereof the offence is committed.

(2) Every prosecution under this section shall be instituted by the officer in charge of the circle of issue in which the bill, hundi, note or engagement is drawn, accepted, made or issued.

*Supplementary Provisions.*

Abstracts of  
accounts.

26. An abstract of the accounts of the Department of Paper Currency, showing—

- (a) the whole amount of currency notes in circulation,
- (b) the amount of coin and bullion reserved, distinguishing gold from silver, and showing separately the amount of coin or bullion held by the Secretary of State for India in Council, or in transit from or to India, or in the custody of the Mint Master during coinage, and
- (c) the nominal value of, and the price paid for, the securities held as part of the reserve, showing separately those held by the Secretary of State for India in Council and those held in India under section 21,

shall be made up four times in each month by the Head Commissioner, and published, as soon as may be, in the Gazette of India.

(Supplementary Provisions. Transfer of Office of Issue from Allahabad to Cawnpore. The Schedule. Enactments repealed.)

27. (1) The Governor General in Council may make rules to carry out the purposes and objects of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) fix the denominational values (not being less than five rupees) for which currency notes shall be issued ;

(b) provide for the alteration of the limits of any of the circles of issue ; and

(c) declare the places at which currency notes shall be issued.

(3) Every such rule shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

28. The enactments mentioned in the schedule are hereby repealed to the extent specified in the last column thereof. Repeals.

XX of 1882.

Provided that all securities purchased and notes issued under the <sup>1</sup>Indian Paper Currency Act, 1882, or any Act thereby repealed shall, if undisposed of or in circulation at the commencement of this Act, be deemed to have been respectively purchased and issued under this Act.

*Transfer of Office of Issue from Allahabad to Cawnpore.*

And whereas it is proposed to close the office of issue at present established in the town of Allahabad and to establish in lieu thereof an office of issue in the town of <sup>2</sup>Cawnpore ; It is hereby further enacted as follows :—

29 For the purposes of sections 14 and 15, a currency note issued from the office of issue in the town of Allahabad prior to the date of the closing of such office shall, notwithstanding anything hereinbefore contained, be deemed, from the date of the establishment of an office of issue in the town of Cawnpore, to have been issued from such last-mentioned office. Special provision for payment of currency notes issued prior to closing of Allahabad office.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 28.)

Year.	No.	Short title.	Extent of repeal.
1882	XX	The Indian Paper Currency Act, 1882.	So much as is unrepealed.
1893	VIII	The Indian Coinage and Paper Currency Act, 1893	So much as relates to the Indian Paper Currency Act, 1882.
1896	XXI	The Indian Paper Currency Act Amendment Act, 1896.	The whole.

<sup>1</sup> Repealed by this Act.

<sup>2</sup> See the note to s. 4 (b), *supra*.



*(The Schedule. Enactments repealed.)*THE SCHEDULE—*contd.*

Year.	No.	Short title.	Extent of repeal
1899	XXII	The Indian Coinage and Paper Currency Act, 1899	So much as relates to the Indian Paper Currency Act, 1882
1900	VIII	The Indian Paper Currency Act, 1900.	So much as is unrepealed.
1902	IX	The Indian Paper Currency Act, 1902.	The whole
1903	VI	The Indian Paper Currency (Amendment) Act, 1903.	The whole.

ACT No. IV of 1905.<sup>1</sup>

[22nd March, 1905.]

An Act to provide for investing the Railway Board with certain powers or functions under the Indian Railways Act, 1890.

WHEREAS a Railway Board has been constituted for controlling the administration of railways in India, and it is expedient to provide for investing such Board with certain powers or functions under the <sup>2</sup> Indian Railways Act, 1890 ; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Railway Board Act, 1905 ; and  
 (2) It shall be read with, and taken as part of, the <sup>3</sup> Indian Railways Act, 1890.

Short title  
and construc-  
tion.

2. The Governor General in Council may, by <sup>3</sup> notification in the Gazette of India, invest the Railway Board, either absolutely or subject to conditions,—

Investment  
of Railway  
Board with  
powers under  
Indian Rail  
ways Act,  
1890.

(a) with all or any of the powers or functions of the Governor General in Council under the Indian Railways Act, 1890, with respect to all or any railways, and

(b) with the power of the officer referred to in section 47 of the said Act to make general rules for railways administered by the Government.

3. Any notice, determination, direction, requisition, appointment, expression of opinion, approval or sanction, to be given or signified on the part of the Railway Board, for any of the purposes of, or in relation to, any powers or functions with which it may be invested by notification under section 2, shall be sufficient and binding if in writing signed by the Secretary to the Railway Board, or by any other person authorized by the said Railway Board to act in its behalf in respect of the matters to which such authorization may relate ; and the said Railway Board shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

Mode of sig-  
nifying com-  
munication  
from the Rail-  
way Board.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1905, Pt. V, p. 16 and for Proceedings in Council, see *ibid*, Pt. VI, pp. 36 and 44.

<sup>2</sup> General Acts, Vol. IV.

<sup>3</sup> For notifications, see Genl. R. and O., Gazette of India, 1907, Pt. I, p. 273 ; *ibid*, 1908, Pt. I, p. 169.

ACT No. V OF 1905.<sup>1</sup>

[18th July, 1905.]

An Act further to amend the <sup>2</sup> Indian Articles of War.

WHEREAS it is expedient further to amend the <sup>2</sup> Indian Articles of War ; V of 1869.  
It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Articles of War (Amendment) Act, 1905.

Amendment  
of articles 4  
and 161 of  
Indian Arti-  
cles of War.

2. In article 4, sub-article (1), clause (b), and in article 161 of the <sup>2</sup> Indian Articles of War for the words “ division or district ” the words “ division, district or brigade ” shall be substituted.

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<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1905, Pt. V, p. 27 and for Proceedings in Council, *see* *ibid*, Pt VI, pp 140 and 141.

<sup>2</sup> General Acts, Vol. II.

ACT No. VI OF 1905.<sup>1</sup>

[29th September, 1905.]

An Act further to amend the Court-fees Act, 1870.

VII of 1870. WHEREAS it is expedient further to amend the <sup>2</sup>Court-fees Act, 1870; It is hereby enacted as follows :—

VII of 1870. 1. This Act may be called the Court-fees (Amendment) Act, 1905.

Short title.

2. In section 7, sub-head xi, of the <sup>2</sup>Court-fees Act, 1870 —

Amendment  
of section 7,  
Act VII,  
1870.

(1) after clause (c), the following clause shall be inserted, namely :—

“(cc) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy ;” and

(2) for the word "land," in both places in which it occurs, the words "immoveable property" shall be substituted.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1905, Pt. V, p. 25; for Report of Select Committee, see *ibid*, pp. 35 and 36; and for Proceedings in Council, see *ibid*, Pt. VI, pp. 39, 139, 147 and 149.

<sup>2</sup> General Acts, Vol. II.

ACT No. I OF 1906.<sup>1</sup>

[26th January, 1906.]

An Act further to amend the Indian Tariff Act, 1894.

WHEREAS it is expedient further to amend the <sup>2</sup> Indian Tariff Act, 1894 ; VIII of 1894.

It is hereby enacted as follows :—

Short title  
and com-  
mencement.1. (1) This Act may be called the Indian Tariff (Amendment) Act, 1906 ;  
and

(2) It shall come into force on the twenty-sixth day of February, 1906.

Amendment  
of Schedule  
III, Act VIII.2. In No. 1 of Schedule III of the <sup>2</sup> Indian Tariff Act, 1894, as amended  
by the <sup>2</sup> Indian Tariff Act (1894) Amendment Act, 1896 —

III of 1896.

(a) “ Rs. 10 ” shall be substituted for “ Rs. 6 ” in the fourth column  
as the rate of duty to be levied and collected per Imperial Gallon  
or six quart bottles of “ liqueurs ”, and

(b) for the following, namely :—

No.	Names of Articles.	Per	Rate of Duty.
*	*	*	*
	Spirit when so used in a proportion of twenty per cent. and upwards.	Imperial Gallon or six quart bottles of the strength of London proof.	Rs. A 6 0 and the duty to be increased or reduced in proportion as the strength of the spirit exceeds or is less than London proof.
	Spirit, perfumed, in wood or in bottles.	Imperial Gallon or six quart bottles	8 0
	Spirit, other sorts.	Imperial Gallon or six quart bottles of the strength of London proof.	6 0 and the duty to be increased or reduced in proportion as the strength of the spirit exceeds or is less than London proof.

there shall be substituted the following, namely :—

No.	Names of Articles.	Per	Rate of Duty.
*	*	*	*
	Spirit when so used in a proportion of twenty per cent. and upwards.	Imperial Gallon or six quart bottles of the strength of London proof.	Rs. A. 7 0 and the duty to be increased or reduced in proportion as the strength of the spirit exceeds or is less than London proof.
	Spirit, perfumed, in wood or in bottles.	Imperial Gallon or six quart bottles.	11 0
	Spirit, other sorts.	Imperial Gallon or six quart bottles of the strength of London proof.	7 0 and the duty to be increased or reduced in proportion as the strength of the spirit exceeds or is less than London proof.

<sup>1</sup> For Proceedings in Council, see Gazette of India, 1906, Pt. VI, p. 7.<sup>2</sup> General Acts, Vol. IV.

## THE INDIAN COINAGE ACT, 1906.

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THE SCHEDULE.—ACTS REPEALED.

(Preliminary—Silver Coinage.)

ACT No. III OF 1906.<sup>1</sup>

[2nd March, 1906.]

An Act to consolidate and amend the law relating to Coinage and the Mint.

WHEREAS it is expedient to consolidate and amend the law relating to Coinage and the Mint ; It is hereby enacted as follows :

*Preliminary.*

1. (1) This Act may be called the Indian Coinage Act, 1906 ; and
- (2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.
2. In this Act, unless there is anything repugnant in the subject or context,—
  - (a) “deface,” with its grammatical variations and cognate expressions, includes clipping, filing, stamping, or such other alteration of the surface or shape of a coin as is readily distinguishable from the effects of reasonable wear ;
  - (b) “the Mint ” includes the Mints now existing and any which may hereafter be established ;
  - (c) “prescribed ” includes prescribed by a rule made under this Act ;
  - (d) “remedy ” means variation from the standard weight and fineness ; and
  - (e) “standard weight” means the weight prescribed for any coin.
3. The Governor General in Council may, by notification in the Gazette of India—
  - (a) establish a Mint at any place at which a Mint does not for the time being exist ; and
  - (b) abolish any Mint, whether now existing or hereafter established.

Short title and extent.

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Power to establish and abolish Mints.

Silver coins.

*Silver Coinage.*

4. The following silver coins only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely :—
  - (a) a rupee to be called the Government rupee ;

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1905, Pt. V, p. 32 ; for Report of Select Committee, see *ibid.*, 1906, Pt. V, p. 9 ; and for Proceedings in Council, see *ibid.*, 1905, Pt. VI, p. 142, *ibid.*, 1906, Pt. VI, p. 28.

The Act has been declared in force in the Angul district by notification under s. 5 of the Angul District Regulation, 1894 (I of 1894), Ben. Code, see Calcutta Gazette, 1907, Pt. I, p. 2077.



(*Silver Coinage, Nickel Coinage, Bronze Coinage.*)

- (b) a half-rupee, or eight-anna piece ;  
 (c) a quarter-rupee, or four-anna piece ; and  
 (d) an eighth of a rupee, or two-anna piece.

Standard  
weight and  
fineness.

5. (1) The standard weight of the Government rupee shall be one hundred and eighty grains Troy and its standard fineness shall be as follows, namely : eleven-twelfths, or one hundred and sixty-five grains of fine silver, and one-twelfth, or fifteen grains of alloy.

(2) The other silver coins shall be of proportionate weight and of the same fineness :

Provided that, in the making of silver coins, a remedy shall be allowed of an amount not exceeding the following, namely :—

		Remedy in weight.	Remedy in fineness.
Rupee	.		
Half-rupee	.	Five-thousandths	Two-thousandths
Quarter-rupee	.	Seven-thousandths	
Eighth of a rupee	.	Ten-thousandths	Three-thousandths.

*Nickel Coinage.*

Nickel coin.

6. The following nickel coin only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely : a one-anna piece.

Standard  
weight.

7. The standard weight of the one-anna piece shall be sixty grains Troy :

Provided that, in the making of nickel coin, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

*Bronze Coinage.*

Bronze  
coins.

8. The following bronze coins only shall be coined at the Mint for issue under the authority of the Governor General in Council, namely :—

- (a) a pice, or quarter-anna ;  
 (b) a half-pice or one-eighth of an anna ; and  
 (c) a pie, being one-third of a pice, or one-twelfth of an anna.

Standard  
weight and  
composition.

9. (1) The standard weight of the pice shall be seventy-five grains Troy and the other bronze coins shall be of proportionate weight.

(2) Bronze coins shall be coined from a mixed metal consisting of copper, tin and zinc.

*(Dimensions and Designs of Coins. Legal Tender.)*

Provided that, in the making of bronze coins, a remedy shall be allowed of an amount not exceeding one-fortieth in weight.

*Dimensions and Designs of Coins.*

10. (1) The Governor General in Council may, by notification<sup>1</sup> in the Gazette of India,—

(a) direct the coining and issuing of all coins referred to in sections 4, 6 and 8, and

(b) determine the dimensions of, and designs for, such coins.

Power to direct coining, and to prescribe dimensions and designs.

(2) Until the Governor General in Council otherwise determines by notification under sub-section (1), the dimensions and designs of the silver coins coined under this Act shall be those prescribed for the like silver coins under the <sup>2</sup>Indian Coinage Act, 1870, at the time of the commencement of this Act.

XXIII of 1870.

*Legal Tender.*

11. Gold coins, whether coined at His Majesty's Royal Mint in England or at any Mint established in pursuance of a Proclamation of His Majesty as a branch of His Majesty's Royal Mint, shall be a legal tender in payment or on account at the rate of fifteen rupees for one sovereign :

Gold coins a legal tender.

Provided that such coins have not been called in by any Proclamation made in pursuance of the <sup>3</sup> Coinage Act, 1870, or have not lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the said Statute as the least current weight.

33 & 34 Vict., c. 10.

12. (1) The rupee and half-rupee shall be a legal tender in payment or on account :

Silver coin when a legal tender.

Provided that the coin—

- (a) has not lost in weight so as to be more than two per cent. below standard weight, and
- (b) has not been defaced.

(2) The quarter-rupee and eighth of a rupee shall be a legal tender in payment or on account for any sum not exceeding one rupee :

Provided that the coin—

- (a) has not lost in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, and
- (b) has not been defaced.

<sup>1</sup> For notification relating to the coinage of bronze coin, see Gen. R. and O., Gazette of India, 1906, P. I, p. 491; for notification for the coining and issue of the nickel one-anna piece, see *ibid.*, 1907, Pt. I, p. 632.

<sup>2</sup> Repealed by this Act.

<sup>3</sup> Coll. Stat., Vol. II, Appendix.

*(Legal Tender. Diminished, Defaced and Counterfeit Silver Coins.)*

Nickel coin  
when a legal  
tender.

13. The nickel coin specified in section 6 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of sixteen for a rupee.

Bronze coin  
when a legal  
tender.

14. The bronze coins specified in section 8 shall be a legal tender in payment or on account for any sum not exceeding one rupee at the following rates, respectively, namely :—

- (a) the pice at the rate of sixty-four for a rupee, or four for an anna ;
- (b) the half-pice at the rate of one hundred and twenty-eight for a rupee, or eight for an anna ; and
- (c) the pie at the rate of one hundred and ninety-two for a rupee, or twelve for an anna.

Coin made  
under former  
Acts.

15. (1) (a) All silver coin of the weight and standard specified in Acts <sup>1</sup>No. XVII of 1835, <sup>2</sup>No. XXI of 1838, <sup>1</sup>No. XIII of 1862 and the <sup>XXIII</sup> of 1870, <sup>3</sup>Indian Coinage Act, 1870, and

(b) all copper coin of the weight specified in Acts <sup>1</sup>No. XXI of 1835, <sup>2</sup>No. XXII of 1844, <sup>1</sup>No. XIII of 1862, and the <sup>3</sup> Indian Coinage Act, 1870,

which may have been issued since the passing of those Acts respectively, and declared by those Acts respectively to be a legal tender, shall, notwithstanding anything contained in this Act or in any Act hereby repealed, but subject in the case of silver coin to the provisos contained in section 12 of this Act in so far as such provisos apply to like coins under this Act, continue to be a legal tender for the amounts for which the like silver and bronze coins are a legal tender under this Act respectively.

(2) All double pice copper coins which may have been issued under the Acts specified in sub-section<sup>1</sup>(1), clause (b), shall continue to be a legal tender in payment or on account for any sum not exceeding one rupee at the rate of thirty-two for a rupee or two for an anna.

*Diminished, Defaced and Counterfeit Silver Coins.*

Power to  
certain per-  
sons to cut  
diminished  
or defaced  
silver coins.

16. Where any silver coin which has been coined and issued under the authority of the Governor General in Council is tendered to any person <sup>4</sup>authorised by the Governor General in Council or by the Local Government to act under this section, and such person has reason to believe that the coin—

- (a) has been diminished in weight so as to be more than such percentage

<sup>1</sup> Repealed by the Indian Coinage Act, 1870.

<sup>2</sup> Repealed by Act XIII of 1862.

<sup>3</sup> Repealed by this Act.

<sup>4</sup> For persons so authorized, see Genl. R. and O. and Gazette of India, 1907, Pt. I, p. 204, and *ibid*, 1909, Pt. I, p. 34.

*(Diminished, Defaced and Counterfeit Silver Coins.)*

below standard weight as may be prescribed as the limit of reasonable wear, or

(b) has been defaced,

he shall, by himself or another, cut or break the coin.

17. A person cutting or breaking coin under the provisions of clause (a) of section 16 shall observe the following procedure, namely :—

(a) if the coin has been diminished in weight so as to be more than such percentage below standard weight as may be prescribed as the limit of reasonable wear, but not more than such further percentage as may be prescribed in this behalf, he shall either return the pieces to the person tendering the coin, or, if such person so requests, shall receive and pay for the coin at such rates as may be prescribed in this behalf ; and

(b) if the coin has been diminished in weight so as to be more than such further percentage below standard weight so prescribed as aforesaid, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking.

18. A person cutting or breaking coin under the provisions of clause (b) of section 16 shall observe the following procedure, namely :—

(a) if such person has reason to believe that the coin has been fraudulently defaced, he shall return the pieces to the person tendering the coin, who shall bear the loss caused by such cutting or breaking ;

(b) if such person has not reason to believe that the coin has been fraudulently defaced, he shall receive and pay for the coin at its nominal value.

*Explanation.*—For the purposes of this section a coin which there is reason to believe has been defaced by sweating shall be deemed to have been fraudulently defaced.

19. If a coin is liable to be cut or broken under the provisions of both clause (a) and clause (b) of section 16, the person cutting or breaking the coin shall deal with it,—

(a) if he has reason to believe that the coin has been fraudulently defaced, under clause (a) of section 18, and

(b) in other cases, under section 17.

2 . Where any silver coin purporting to be coined or issued under the authority of the Governor General in Council is tendered to any person authorised by the Governor General in Council or by the Local Government to act under this section, and such person has reason to believe that the coin is

Procedure in regard to coin cut under section 16(a).

Procedure in regard to coin cut under section 16 (b).

Procedure in regard to coin which is liable to be cut under both clause (a) and clause (b) of section 16.

Power to certain persons to cut counterfeit silver coin and

*(Supplemental Provisions.)*

procedure in  
regard to  
coin so cut.

counterfeit, he shall by himself or another cut or break the coin, and may at his discretion either return the pieces to the tenderer, who shall bear the loss caused by such cutting or breaking, or receive and pay for the coin according to the value of the silver bullion contained in it.

*Supplemental Provisions.*

Power to  
make rules.

21. (1) The Governor General in Council may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

- (a) reduce the amount of remedy allowed by sections 5, 7 and 9 in the case of any coin ;
- (b) provide for the guidance of persons authorised to cut or break coin under sections 16 and 20 ;
- (c) determine the percentage of diminution in weight below standard weight not being less in any case than two per cent. which shall be the limit of reasonable wear ;
- (d) prescribe the further percentage referred to in clause (a) of section 17, and the rates at which payments shall be made in the case of coins falling under the same clause ; and
- (e) provide for the acceptance at prescribed rates by officers authorised in this behalf of the gold coins described in section 11 where such coins have lost weight so as to be of less weight than that for the time being prescribed for like coins by or under the <sup>1</sup>Coinage Act, 1870, as the least current weight.

33 and 34  
Vict., c. 10.

(3) Every such rule shall be published in the Gazette of India, and on such publication shall have effect as if enacted in this Act.

Bar of suits

22. No suit or other proceeding shall lie against any person in respect of anything in good faith done, or intended to be done, under or in pursuance of the provisions of this Act.

Saving of  
making of  
other coins  
at Mints.

23. Nothing in this Act shall be deemed to prohibit or restrict the making at the Mint of coins intended for issue as money by the Government of any territories beyond the limits of British India.

Repeals.

24. The Acts mentioned in the Schedule are hereby repealed to the extent specified in the last column thereof :

Provided that copper coins of such descriptions as at the time of the commencement of this Act may be coined at the Mint for issue under the authority of the Governor General in Council may, notwithstanding the repeal of

<sup>1</sup> Coll. Stat., Vol. II, Appendix.

*(Supplemental Provisions.)*

the said Acts, continue to be so coined until such time<sup>1</sup> as the Governor General in Council may by notification in the Gazette of India otherwise direct, and all copper coins so coined shall be a legal tender in payment or on account for the amounts for which bronze coins of corresponding nominal value are a legal tender under this Act.

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THE SCHEDULE.

*(See section 24.)*

ACTS REPEALED.

Year.	No.	Short title.	Extent of repeal.
1870	XXIII	The Indian Coinage Act, 1870 .	So much as is unrepealed.
1893	VIII	The Indian Coinage and Paper Currency Act, 1893.	So much as relates to the Indian Coinage Act, 1870.
1899	XXII	The Indian Coinage and Paper Currency Act, 1899.	So much as relates to the Indian Coinage Act, 1870.

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<sup>1</sup> Gazette of India, 1906, Pt. I, p. 491.

ACT No. IV OF 1906.<sup>1</sup>

[21st March, 1906.]

An Act further to amend the <sup>1</sup>Presidency Small Cause Courts Act, 1882.

WHEREAS it is expedient further to amend the <sup>2</sup>Presidency Small Cause XV of 1882. Courts Act, 1882 ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Presidency Small Cause Courts Act, 1906.

Amendment  
of section  
28, Act XV,  
1882.

2. In section 28 of the <sup>2</sup>Presidency Small Cause Courts Act, 1882, after XV of 1882. the words “such decree” the words “and for the purpose of deciding all questions arising in the execution of such decree” shall be inserted.

Amendment  
of section 39  
of same Act.

3. In section 39 of the said Act, for sub-section (2) the following shall be substituted, namely :—

“(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right :

“Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order, for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.”

Substitution  
of new sec-  
tion for sec-  
tion 69 of  
same Act.  
Reference  
when com-  
pulsory.

4. For section 69 of the said Act the following shall be substituted, namely :—

“69. (1) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court ; and the provisions of sections 619 to 621 of the <sup>3</sup>Code of Civil Procedure shall, so far as they are applicable, be deemed to XIV of 1882.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1905, Pt. V, p. 46 ; for Report of Select Committee, see *ibid*, 1906, Pt. V, p. 17 ; and for Proceedings in Council, see *ibid*, 1905, Pt. VI, p. 156, and *ibid*, 1906, Pt. VI, p. 33.

<sup>2</sup> General Acts, Vol. III.

<sup>3</sup> See now the Code of Civil Procedure, 1908 (Act V of 1908), Schedule I, Order XLVI, *infra*.

apply as if such reference had been made under section 617 of the said Code.

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1) it shall either reserve judgment or give judgment contingent upon such opinion."

5. [*Amendment of second schedule, Act XV, 1877*].—*Rep. by the* <sup>1</sup>*Indian Limitation Act, 1908 (IX of 1908).*

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<sup>1</sup> *Infra.*



ACT No. V OF 1906.<sup>1</sup>

[31st March, 1906.]

An Act further to amend the <sup>2</sup>Indian Stamp Act, 1899.

Whereas it is expedient further to amend the <sup>2</sup>Indian Stamp Act, 1899 ; II of 1899.  
It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Stamp (Amendment) Act, 1906.

Repeal of  
part of sec-  
tion 2, Act  
II, 1899.

2. In section 2, clause (19), of the <sup>2</sup>Indian Stamp Act, 1899 (hereinafter II of 1899.  
referred to as “the said Act”), sub-clause (c), and the word “and” prefixed  
thereto, are hereby repealed.

Amendment  
of sections  
11, 32, 35,  
40, 41, 69  
and 74, Act  
II, 1899.

3. In section 11, clause (a), section 32, proviso, clause (c), section 35,  
proviso, clause (a), section 40, section 41, section 69 and section 74, of the  
said Act, after the words “one anna”, wherever they occur, the words “or  
half an anna” shall be inserted.

Substitution  
of new clause  
for clause (b)  
of section 29,  
Act II, 1899.

4. For section 29, clause (b), of the said Act, the following shall be sub-  
stituted, namely :—

“(b) in the case of a policy of insurance other than fire-insurance—by  
the person effecting the insurance ;

(bb) in the case of a policy of fire-insurance—by the person issuing the  
policy ;”.

Addition to  
section 30,  
Act II, 1899.

5. To section 30 of the said Act the following paragraph shall be added,  
namely :—

“Any person receiving or taking credit for any premium or consideration  
for any renewal of any contract of fire-insurance, shall, within one month after  
receiving or taking credit for such premium or consideration, give a duly  
stamped receipt for the same.”

Amendment  
of section 51,  
Act II, 1899.

6. In section 51 of the said Act, after the word “instruments” the words  
“by any banker or”, and after the word “said” the word “banker”, shall be  
inserted.

Amendments  
of Schedule  
I, Act II,  
1899.

7. In Schedule I of the said Act, the following amendments shall be  
made, namely :—

(1) For clauses (b) and (c) of the exemptions from Article No. 24 the  
following shall be substituted, namely :—

“(b) Copy of, or extract from, any register relating to births, bap-  
tisms, namings, dedications, marriages, deaths or burials.”

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1906, Pt. V, p. 6 ; for Report of Select Committee, see *ibid.*, p. 21 ; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 3 and 33.  
The Act has been declared in force by notification under s 5 of the Angul District Regula-  
tion, 1894 (I of 1894), in the head-quarters sub-division of the Angul district, see Calcutta  
Gazette, 1907, Pt. I, p. 2077.

<sup>2</sup> General Acts, Vol. V.

(2) In clause (b) of Article No 41, for the words "one year" the words "eighteen months" shall be substituted.

(3) For divisions A and B of Article No. 47 the following shall be substituted, namely :—

	If drawn singly.	If drawn in duplicate, for each part
“A.—SEA-INSURANCE (see section 7)—		
(1) for or upon any voyage—		
(i) where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy ;	One anna . . .	Half an anna.
(ii) in any other case, in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy ;	Two annas . . .	One anna.
(2) for time—		
(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—		
where the insurance shall be made for any time not exceeding six months ;	Two annas . . .	One anna.
where the insurance shall be made for any time exceeding six months and not exceeding twelve months.	Four annas . . .	Two annas.
“B.—FIRE INSURANCE—		
(1) in respect of an original policy—		
(i) when the sum insured does not exceed Rs. 5,000 ;	Eight annas.	
(ii) in any other case ; . . .	One rupee.	
and		
2) In respect of each receipt for any payment of a premium on any renewal of an original policy.	One-half of the duty payable in respect of the original policy in addition to the amount, if any, chargeable under No. 53.”	

(4) To Article No. 53 the following note shall be added, namely :—

“See also POLICY OF INSURANCE [No. 47-B (2)].”

ACT No. VI of 1906.<sup>1</sup>

[21st March, 1906.]

An Act further to amend the law relating to merchant seamen.

WHEREAS it is expedient further to amend the law relating to merchant seamen; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Merchant Shipping (Amendment) Act, 1906.

Amendment  
of section 23,  
Act I, 1859.

2. To section 23 of the <sup>2</sup>Indian Merchant Shipping Act, 1859, the following shall be added, namely:—

I of 1859.

“Notwithstanding anything in this section, in the case of any such foreign-going ship as aforesaid, being a ship—

(a) registered in British India under the <sup>3</sup>Merchant Shipping Act, 1894, or

57 & 58  
Vict., c. 60.

(b) registered in the United Kingdom under the said <sup>3</sup>Merchant Shipping Act, 1894, but not employed in trading with any port in the United Kingdom,

a running agreement with the crew may be made to extend over two or more voyages so that it shall terminate either within six months from the date on which it was executed or on the first arrival of the ship at her port of destination in British India after the expiration of that period, or on the discharge of cargo consequent upon such arrival, whichever of these dates shall be the latest:

“Provided that no such agreement shall continue in force, if, after the expiration of such period of six months as aforesaid, the ship proceeds on a voyage from a port out of British India to any other such port which is not on the direct road or a customary route to her port of destination in British India.

“Provided also that every such agreement shall, in addition to any other particulars required by law, contain such stipulations for the discharge of the crew and payment of their wages, for securing their return to the port at which they were shipped or to some other port in British India, and for other purposes on the termination of the agreement at a port out of British India under the foregoing proviso, as the Governor General in Council may direct.”

Amendment  
of section  
24A, Act I,  
1859.

3. In section 24A of the said <sup>2</sup>Indian Merchant Shipping Act, 1859, as amended by section<sup>2</sup> of the <sup>4</sup>Indian Merchant Shipping Law Amendment Act, 1891, after the word “December” the words “or, as the case may be, after the expiration of a period of six months from the date on which it was executed,” shall be inserted.

I of 1859.  
VI of 1891.

<sup>1</sup> For Statement of Objects and Reasons, see *Gazette of India*, 1906, Pt. V, p. 7; for Report of Select Committee, see *ibid*, p. 25; and for Proceedings in Council, see *ibid*, Pt. VI, pp. 4 and 33.

<sup>2</sup> General Acts, Vol. I.

<sup>3</sup> Coll. Stat., Vol. II.

<sup>4</sup> General Acts, Vol. IV.

ACT No. VIII of 1906.<sup>1</sup>

[31st August, 1906.]

An Act to amend the Land Improvement Loans Act, 1883, and the Agriculturists' Loans Act, 1884.

XIX of 1883. WHEREAS it is expedient to amend the <sup>2</sup>Land Improvement Loans Act, 1883, and the <sup>3</sup>Agriculturists' Loans Act, 1884, It is hereby enacted as follows :—

1. This Act may be called the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906. Short title.

XIX of 1883 2. In section 1, sub-section (2), and in section 4, sub-section (2), clause (f), of the <sup>2</sup>Land Improvement Loans Act, 1883, the words " with the previous sanction of the Governor General in Council " shall be omitted. Amendment of sections 1 and 4, Act XIX, 1883.

3. In section 6, sub-section (3), of the said Act, the words " and Governor General in Council " and the words " and sanctioning " shall be omitted. Amendment of section 6 of same Act.

4. In section 10 of the said Act, for the words " with the previous sanction " the words " subject to the control " shall be substituted. Amendment of section 10 of same Act.

5. In the first proviso to section 11 of the said Act, the words " with the approval of the Governor General in Council " shall be omitted. Amendment of section 11 of same Act.

XII of 1884. 6. In section 4, sub-section (1), of the <sup>3</sup>Agriculturists' Loans Act, 1884, for the words " with the previous sanction " the words " subject to the control " shall be substituted. Amendment of section 4, Act XII, 1884

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1906, Pt. V, p. 29, and for Proceedings in Council, see *ibid.*, Pt. VI, pp 116 and 120.

The Act has been declared by notification under s 5 of the Angul District Regulation, 1894 (I of 1894), Ben. Code, to be in force in the Angul district, see Calcutta Gazette, 1907, Pt. I, p. 2077.

<sup>2</sup> General Acts, Vol III

<sup>3</sup> *Ibid.*

ACT No. I of 1907.<sup>1</sup>

[15th February, 1907.]

An Act further to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient further to amend the <sup>2</sup>Presidency Banks Act, XI of 1876. 1876 ; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Presidency Banks (Amendment) Act, 1907.

Amendment  
of sections 10  
and 14, Act  
XI, 1876.

2. In section 10 of the <sup>2</sup>Presidency Banks Act, 1876, the words “to thirty millions of rupees”, “to twelve millions of rupees” and “to twenty millions of rupees” and in section 14 of the said Act, the proviso, shall be repealed. XI of 1876.

Amendment  
of section 36  
of same Act.

3. In section 36 of the said Act the following amendments shall be made, namely :—

(i) in paragraph (a), to clause (1) the following shall be added, namely :—  
“and, in the case of the Bank of Madras, securities of the Government of Ceylon” ;

(ii) in the same paragraph, to clause (3) the following shall be added, namely :—

“or such securities issued by State-aided railways as the Governor General in Council may from time to time prescribe” ;

(iii) in the same paragraph, in clause (4), after the words “any municipal body” the words “or any district board” shall be inserted ;

(iv) in the same paragraph, to clause (6) the following shall be added, namely :—

“and joint and several promissory notes of two or more persons or firms unconnected with each other in general partnership” ;

(v) after paragraph (b) the following shall be inserted, namely :—

“(bb) the advancing and lending money to Courts of Wards upon the security of estates in their charge or under their superintendence and the realization of such advances or loans and any interest due thereon, provided that no such advance or loan shall be made without the previous sanction of the Local Government concerned and that the period for which any such advance or loan is made shall not exceed six months” and

<sup>1</sup> For Statement of Objects and Reasons, see *Gazette of India*, 1906, Pt V, p 48 ; for Report of Select Committee, see *ibid*, 1907, Pt. V, p 3 ; and for Proceedings in Council, see *ibid*, 1906, Pt. VI, pp 123 and 127, and *ibid*, 1907, Pt. VI, p. 14

<sup>2</sup> General Acts, Vol. II.

(vi) at the end of paragraph (d) the following shall be added, namely :—

“ Provided that—

- (1) the power of investing in the securities of the Government of Ceylon shall extend only to the Bank of Madras, and
- (2) the total of the assets held at any time by the Bank of Madras either upon the security of, or invested in, securities of the Government of Ceylon, in accordance with the authority conferred by paragraph (a), clause (1), or this paragraph, shall not exceed the sum of the deposits held and balances of cash accounts at credit at the Ceylon Branch of the said Bank of Madras.”

4. In section 37 of the said Act the following amendments shall be made namely :—

Amendments  
of section 37  
of same Act.

- (i) in clause (a) for the words “three months” the words “six months” shall be substituted ;
- (ii) to clause (c) the following words shall be prefixed, namely :—  
“save in the case of the estates specified in section 36, paragraph (bb)”;
- (iii) in clause (f), for the words “three months”, each time they occur, the words “six months” shall be substituted, and the proviso shall be repealed ; and
- (iv) in the last paragraph, for the words “from overdrawing” the words “to overdraw,” and for the words “sums not exceeding at any one time two thousand rupees in the whole” the words “such sums not exceeding at one time ten thousand rupees in the whole as may be prescribed for the time being by the bye-laws made under this Act” shall be substituted.

5. After section 42 of the said Act the following section shall be inserted, namely :—

Addition of  
new section  
42A to same  
Act.

“42A. (1) With the sanction of the Governor General in Council, the directors may at any time enter into negotiations for and purchase and take over the business, including the capital, assets and liabilities, of any banking company carrying on business in India of which the capital is divided into shares, and may pay the consideration for such purchase either in cash or by the allotment of shares in the capital stock of the Bank, or partly in one and partly in the other of these ways, and may, for the purpose of any such allotment of shares, increase the capital stock of the Bank by the issue of such number of shares as may be determined on by them :

Power of  
Bank to take  
over business  
of certain  
other Banks  
and for that  
purpose to  
increase its  
capital.

Provided that the directors shall not make any increase of the capital stock of the Bank under this section unless the proprietors and shareholders have passed a special resolution in accordance with the provisions of section 13 sanctioning such increase.

(2) The persons to whom such new shares are allotted shall be proprietors of the Bank, and be in all respects in the same position as if they had respectively subscribed and paid for the shares so allotted to them :

Provided always that the business so purchased shall after the purchase be carried on by the Bank subject to the several restrictions contained in this Act.

*Explanation.*—For the purposes of this section ‘banking company’ means any company formed for the purpose of carrying on the business of banking and registered under the <sup>1</sup>Indian Companies Act, 1882, or the law relating to <sup>VI</sup> of 1882 Companies for the time being in force in British India.”

Addition to  
section 63 (a)  
of same Act

6. In section 63 of the said Act, to clause (a) the words “and the extent of the sums to which accounts may be overdrawn without security under the provisions of the last paragraph of section 37 ” shall be added.

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<sup>1</sup> Gen. Acts, Vol. III.

## THE PROVINCIAL INSOLVENCY ACT, 1907.

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THE SCHEDULE.

ENACTMENTS REPEALED.

ACT No. III OF 1907.<sup>1</sup>

[ 15th March, 1907. ]

An Act to consolidate and amend the Law relating to Insolvency in British India, as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon.

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in British India as administered by Courts having jurisdiction outside the Presidency-towns and the Town of Rangoon ; It is hereby enacted as follows :—

1. (1) This Act may be called the Provincial Insolvency Act, 1907.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of British India, except the <sup>2</sup>Scheduled Districts : and

(3) It shall come into force on the first day of January 1908.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) “ available act of insolvency ” means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made :

(b) “ creditor ” includes a decree-holder, “ debt ” includes a judgment-debt, and “ debtor ” includes a judgment-debtor :

(c) “ District Court ” means the principal Civil Court of original jurisdiction in any area outside the local limits for the time being of the Presidency-towns and of the Town of Rangoon :

(d) “ prescribed ” means prescribed by rules made under this Act :

(e) “ property ” includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit :

(f) “ secured creditor ” includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land : and

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1906, Pt. V, p. 42 ; for Report of Select Committee, *see* *ibid*, 1907, Pt. V, p. 7 ; and for Proceedings in Council, *see* *ibid*, 1906, Pt. VI, p. 121 ; *ibid*, 1907, Pt. VI, pp. 19 and 22.

<sup>2</sup> The Act has been extended under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), to (1) the Town and Cantonment of Karachi,—Gazette of India, 1908, Pt. I, p. 47 ; (2) to Upper Burma,—Burma Gazette, 1908, Pt. I, p. 300 ; (3) Cachar (excluding the North Cachar Hills), Sylhet, Goalpara (excluding the Eastern Duars), Kamrup, Darrang, Nowgong (excluding the Nowgong Mikir Hill tracts), Sibsagar (excluding the Dibrugarh Frontier tracts) and Jalpaiguri,—Gazette of India, 1908, Pt. I, p. 773 ; (4) Coorg,—Gazette of India, 1908, Pt. II, p. 1540 ; (5) Sindh,—*see* Gazette of India, 1909, Pt. I, p. 33 ; (6) Scheduled Districts of the Punjab,—*see* Punjab Gazette, 1909, Pt. I, p. 14 ; (7) the Darjiling District,—*see* Gazette of India, 1909, Pt. I, p. 152 ; and (8) the Chota Nagpur Division, except those portions of the Kolhan in the Singhbhum District not included in the Chaibassa Municipality,—*see* Gazette of India, 1909, Pt. I, p. 119.

(g) "the Court" means the Court exercising jurisdiction under this Act.

(2) Save as herein otherwise provided, all words and expressions defined in the <sup>1</sup>Code of Civil Procedure shall have the same meanings as those respectively assigned to them in the said Code.

Insolvency  
jurisdiction.

3. (1) The District Courts shall be the Courts having jurisdiction under this Act :

Provided that the Local Government may, with the previous sanction of the Governor General in Council, by <sup>2</sup>notification in the local official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act.

(2) For the purposes of this Act, a Court of Small Causes shall be deemed to be subordinate to the District Court.

Acts of in-  
solvency.

4. A debtor commits an act of insolvency in each of the following cases, namely :—

- (a) if, in British India or elsewhere, he makes a transfer of his property to a third person for the benefit of his creditors generally ;
- (b) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors ;
- (c) if, in British India or elsewhere, he makes any transfer of his property or of any part thereof or of any interest therein, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;
- (d) if, with intent to defeat or delay his creditors,—
  - (i) he departs or remains out of British India,
  - (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,
  - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him ;
- (e) if any of his property has been sold in execution of the decree of any Court for the payment of money ;
- (f) if he petitions to be adjudged an insolvent under the provisions of this Act ;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts ;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.

<sup>1</sup> See now Act V of 1908, *infra*.

<sup>2</sup> See U. P. Gazette, 1908, Pt. I, p. 363 ; Burma Gazette, 1907, Pt. I, p. 1031 ; and *ibid*, 1908, Pt. I, p. 300.

*Explanation.*—For the purposes of this section the act of an agent may be the act of the principal.

5. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent. Petition and adjudication.

*Explanation.*—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

6. (1) Every insolvency petition shall be in writing, and shall be signed and verified in the manner prescribed by the <sup>1</sup>Code of Civil Procedure for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions. Presentation and admission of petitions.

(2) Every insolvency petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to present an insolvency petition unless—

- (a) his debts amount to five hundred rupees ; or
- (b) he has been arrested or imprisoned in execution of the decree of any Court for the payment of money ; or
- (c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

(4) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after

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<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act V of 1908), *infra*.

deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Withdrawal  
of petitions.

7. No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

Consolidation  
of petitions.

8. Where two or more insolvency petitions are presented against the same debtor or where separate petitions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Power to  
change  
carriage of  
proceedings

9. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.

Continuance  
of proceed-  
ings on death  
of debtor.

10. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Contents of  
petition.

11. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely :—

- (a) a statement that the debtor is unable to pay his debts ;
- (b) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;
- (c) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made ;
- (d) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by, him ;
- (e) the amount and particulars of all his property, together with—
  - (i) a specification of the value of all such property not consisting of money ;
  - (ii) the place or places at which any such property is to be found ; and
  - (iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the

XIV of 1882

<sup>1</sup>Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(2) Every insolvency petition presented by a creditor<sup>1</sup> or creditors shall set forth the particulars regarding the debtor specified in clause (b) of sub-section (1), and shall also specify—

- (a) the act of insolvency committed by such debtor, together with the date of its commission ; and
- (b) the amount and particulars of his or their pecuniary claim or claims against such debtor.

12. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

Procedure on admission of petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the local official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely :—

Interim proceedings against debtor.

- (1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison,
- (2) order the appointment of an interim receiver of the property of the debtor or of any part thereof,
- (3) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the <sup>1</sup>Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree,
- (4) order a warrant to issue with or without bail for the arrest of the debtor and direct either that he be detained in the civil prison until the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary :

Provided that an order under clause (2), clause (3) or clause (4) shall not

XIV of 1882.

<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act V of 1908), *infra*.

be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

- (i) has absconded or has departed from the local limits of the jurisdiction of the Court or is about to abscond or to depart from such limits, or is remaining outside them, or
- (ii) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Procedure at  
hearing.

14. (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

- (a) that the creditor or the debtor, as the case may be, is entitled to present the petition,
- (b) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and
- (c) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the Judge and shall form part of the record of the case.

Dismissal of  
petition.

15. (1) Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1) and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the

petition and the proceedings thereon, and such amount may be realised as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

16. (1) Where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication. Order of adjudication.

(2) On the making of an order of adjudication—

(a) the whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted by the <sup>1</sup>Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors, and

(b) the insolvent, if in prison for debt, shall be released ;

and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property or person of the insolvent in respect of the debt or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), clause (a), all goods being, at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner under such circumstances that he is the reputed owner thereof shall be deemed to be the property of the insolvent.

(4) All such property as may be acquired by or devolve on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and become divisible among the creditors in accordance with the provisions of sub-section (2), clause (a).

(5) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

(6) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(7) Notice of an order of adjudication stating the name, address and

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<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act V of 1908), *infra*.



description of the insolvent, the date of the adjudication and the Court by which the adjudication is made, shall be published in the local official Gazette and in such other manner as may be prescribed.

Power to  
cancel one of  
concurrent  
orders of  
adjudication.

17. If in any case in which an order of adjudication has been made it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication and stay all proceedings or dismiss the petition on such terms (if any) as the Court thinks fit

Appointment  
of receiver.

18. (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(a) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property ; and

(b) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is, from the possession or custody thereof :

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the balance due from him thereon as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

Power to  
appoint  
Official  
Receivers.

19. (1) The Local Government may appoint such persons as it thinks fit (to be called " Official Receivers " ) to be receivers under this Act within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) Any sum payable under section 18, sub-section (2), clause (b), in

respect of the services of an Official Receiver shall be credited to such funds as the Local Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Local Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

20. Subject to the provisions of this Act. the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

Duties and powers of receiver.

(a) sell all or any part of the property of the insolvent ;

(b) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely :—

(c) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same ;

(d) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent ;

(e) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court ;

(f) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulations as to security and otherwise as the Court thinks fit ;

(g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts ;

(h) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon ;

(i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

XIV of 1882. 21. (1) In any local area in which a declaration has been made under section 320 of the <sup>1</sup>Code of Civil Procedure and is in force, no sale of immoveable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver ; but, after the other property of the insolvent has been realised, the Court shall ascertain—

Special provisions in regard to immoveable property.

(a) the amount required to satisfy the debts proved under this Act after deducting the monies already received,

(b) the immoveable property of the insolvent remaining unsold, and

(c) the incumbrances (if any) existing thereon,

and shall forward a statement to the Collector containing the particulars

<sup>1</sup> See now the Code of Civil Procedure, 1908 (Act V of 1908), ss. 68 and 69, *infra*.

aforesaid ; and thereupon the the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 of the said Code as he thinks fit, and subject to the provisions of those sections so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

(2) Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property ; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

Appeal to  
Court  
against  
receiver.

22 If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just :

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

Powers of  
Court if no  
receiver  
appointed.  
Schedule of  
creditors.

23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the the powers conferred on, a receiver under this Act.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts :

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect and thereupon the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the insolvent and the other creditors, and hearing their objections (if any), shall comply with or reject the application.

Mode of  
proof.

25. (1) A debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers if any by

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*See now the Code of Civil Procedure, 1908 (Act V of 1908), ss. 68 and 69, *infra*.*

which the same can be substantiated. The Court may at any time call for the production of the vouchers.

26. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

Disallowance  
and reduction  
of entries in  
schedule.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

27. (1) Where a debtor, whether before or after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal and shall issue a notice to all creditors by publication in the local official Gazette and in such other manner as may be prescribed.

Compositions  
and schemes  
of arrange-  
ment.

(2) If on the consideration of the proposal a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) In any other case the Court may either approve or refuse to approve the proposal.

(7) If the Court approves the proposal, the terms shall be embodied in an order of the Court and the Court shall frame a schedule in accordance with the provisions of section 24, the order of adjudication (if any) shall be annulled, and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.

(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this sub-section all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

Debts prov-  
able under  
this Act.

**28. (1)** Save as provided by sub-section (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Act.

Debt payable  
at a future  
time.

**29.** A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual deal-  
ings and  
set-off.

**30** Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

Secured  
creditors.

**31. (1)** Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value a

which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section, he shall be excluded from all share in any dividend.

**32** (1) On any debt or sum certain whereon interest is not reserved Interest. or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum,—

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication ; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

**33** (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts— Priority of debts.

(a) all debts due to the Crown or to any local authority ; and

(b) all salary or wages not exceeding twenty rupees in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1)

shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property, and, where there is a surplus of the partnership property it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Restriction  
of rights of  
creditor  
under execu-  
tion.

34. (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

Duties of  
Court exe-  
cuting decree  
as to pro-  
perty taken  
in execution.

35. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of  
voluntary  
transfer.

36. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

Avoidance of  
preference in  
certain case.

37. (1) Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding

taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

38. Subject to the foregoing provisions of this Act with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

Protection of  
*bonâ fide*  
transactions.

- (a) any payment by the insolvent to any of his creditors ;
- (b) any payment or delivery to the insolvent ;
- (c) any transfer by the insolvent for valuable consideration ; or
- (d) any contract or dealing by or with the insolvent for valuable consideration :

Provided that any such transaction takes place before the date of the order of adjudication.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

Dividends.

- (a) debts provable under this Act and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs ;
- (b) debts provable under this Act, the subject of claims not yet determined ;
- (c) disputed proofs or claims ; and
- (d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends ; but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.



(4) When the receiver has realised all the property of the insolvent or so much thereof as can in the opinion of the Court be realised without needlessly protracting the receivership, he shall declare a final dividend; but before doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

(5) No suit for a dividend shall lie against the receiver; but, where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management  
by and allow-  
ance to insol-  
vent.

40. (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of  
insolvent  
to surplus.

41. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest as provided by this Act, and of the expenses of the proceedings taken thereunder.

Power to  
annul ad-  
judication  
of insol-  
vency.

42. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, or where a composition, or scheme has been approved by the Court under section 27, the Court shall on the application of the debtor or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication is annulled under sub-section (1), all sales and dispositions of property and payments duly made, and all acts theretofore done by the Court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the

debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(3) Notice of every order annulling an adjudication shall be published in the local official Gazette and in such other manner as may be prescribed.

43. (1) Every debtor, whether before or after the making of an order of adjudication, shall produce all books of account, give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors, as may be required by the Court or receiver, or as may be prescribed.

Duties of  
debtors

(2) If a debtor, whether before or after the making of an order of adjudication,—

- (a) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or
- (b) fraudulently or vexatiously conceals, destroys, transfers, removes or refuses to produce any property or books of account, or
- (c) commits any other act of bad faith in the performance of the duties imposed on him by this section,

the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year ; and in every such case the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

44. (1) A debtor may, at any time after the order of adjudication, apply to the Court for an order of discharge ; and the Court shall fix a day, notice whereof shall be given by publication in the local official Gazette and in such other manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

Discharge.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver,—

- (a) grant or refuse an absolute order of discharge ; or
- (b) suspend the operation of the order for a specified time ; or
- (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

(3) The <sup>1</sup>Court shall refuse to grant an absolute order of discharge on proof of any of following facts, namely :—

- (a) that the insolvent's assets are not of a value equal to eight annas in

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<sup>1</sup> *Sic.*

the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible ;

- (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency ;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent ;
- (d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;
- (e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities ;
- (f) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs ;
- (g) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they became due, given an undue preference to any of his creditors ;
- (h) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors ;
- (i) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence ; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently.

Effect of  
order of dis-  
charge.

45. (1) An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown ;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ; or
- (c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

46. (1) Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final : Appeals.

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

(2) Any person aggrieved by an order made by the District Court under sections 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44 otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court.

(3) Any person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court or of the High Courts

(4) The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days respectively.

47. (1) Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction. General powers of Courts.

(2) Subject as aforesaid, High Courts and District Courts, in regard to proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon— Summary administration.

(a) the estate shall, where practicable, be distributed in a single dividend,

(b) the provisions of this Act shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure :

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

49. The costs of any proceeding under this Act, including the costs of Costs.

maintaining a debtor in the civil prison, shall, subject to any rules made under this Act, be in the discretion of the Court in which the proceeding is had.

Courts to be  
auxiliary  
to each  
other.

50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Power to  
make rules.

51. (1) The High Court may, with the previous sanction, in the case of the High Court of Judicature at Fort William in Bengal, of the Governor General in Council and, in the case of any other High Court, of the Local Government, make rules<sup>1</sup> for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

- (a) for the appointment and remuneration of receivers (other than Official Receivers), the audit of the accounts of all receivers and the costs of such audit,
- (b) for meetings of creditors, and
- (c) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall, on such publication, have effect as if enacted in this Act.

Delegation  
of powers to  
Official  
Receivers.

52. (1) The High Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, the Official Receiver shall, subject to the directions of the Court, have all or any of the following powers, namely :—

- (a) to hear insolvency petitions, to examine the debtor and to make orders of adjudication ;
- (b) to frame schedules and to admit or reject proofs of creditors ;
- (c) to grant orders of discharge ;
- (d) to approve compositions or schemes of arrangement ;
- (e) to make interim orders in any case of urgency ;
- (f) to hear and determine any unopposed or *ex parte* application.

(2) Subject to the appeal to the Court provided for by section 22, any

<sup>1</sup> For rules made by (1) the Calcutta High Court *see* Gazette of India, 1907, Pt. II, p. 1587 ; Calcutta Gazette, 1907, Pt. I, p. 1866 ; (2) the Madras High Court, *see* Fort St. George Gazette, 1908, Pt. I, p. 819 ; (3) by the Chief Court of Lower Burma, *see* Burma Gazette, 1908, Pt. IV, p. 775 ; (4) by the Judicial Commissioner in Sind, *see* Bombay Government Gazette, 1908, Pt. p. 1940.

order made or act done by the Official Receiver in exercise of the said powers shall be deemed the order or act of the Court.

53. (1) An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Undis-  
charged  
insolvent  
obtaining  
credit.

(2) Where the Court has reason to believe that an undischarged insolvent has committed the offence referred to in sub-section (1), the Court, after making any preliminary inquiry that may be necessary, may send the case for trial to the nearest Magistrate of the first class, and may send the accused in custody or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such trial.

54. Any Local Government, with the previous sanction of the Governor General in Council, may, by notification<sup>1</sup> in the local official Gazette, declare that the following provisions or any of them shall not apply to insolvency proceedings in any Court or Courts having jurisdiction under this Act in any part of the territories administered by such Local Government, namely :—

Power of  
Local Gov-  
ernment to  
bar applica-  
tion of  
certain pro-  
visions to  
certain  
Courts.

section 15, sub-sections (2) and (3),

section 16, sub-section (3),

sections 25 to 40 [except sub-section (1), clause (a), and sub-section (4) of section 33],

section 44, sub-sections (3) and (4), and section 53.

55. Nothing in this Act shall—

Savings.

11 & 12  
Vict. c. 21.

(a) affect the <sup>2</sup>Indian Insolvency Act, 1848, or section 8 of the Lower Burma Courts Act, 1900, or

VI of 1900.  
XVII of  
1879.

(b) apply to cases to which Chapter IV of the <sup>3</sup>Dekkhan Agriculturists' Relief Act, 1879, is applicable.

56. (1) The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeals.

(2) Where in any enactment or instrument in force at the date of the commencement of this Act reference is made to Chapter XX (OF INSOLVENT JUDGMENT-DEBTORS) of the Code of Civil Procedure, 1877, or of the Code of Civil Procedure, 1882, or to any section of either of those Chapters such reference shall, so far as may be practicable, be construed as applying to this Act or to the corresponding section thereof.

X of 1877.  
XIV of 1882.

<sup>1</sup> For such a notification, see Burma Gazette, 1908, Pt. I, p. 300.

<sup>2</sup> Coll. Stat., Vol. I.

<sup>3</sup> Bom. Code.

## THE SCHEDULE.

## ENACTMENTS REPEALED.

*(See section 56.)*

Year.	No.	Short title.	Extent of repeal.
1872	IV	The Punjab Laws Act, 1872 . . .	Sections 22 to 32.
1877	XV	The Indian Limitation Act, 1877 . . .	No. 174 of the Second Schedule
1882	XIV	The Code of Civil Procedure . . .	Section 341, clause (e), and Chapter XX (sections 344 to 360A).
1888	VII	The Civil Procedure Code Amendment Act, 1888.	Section 31

ACT No. V OF 1907.<sup>1</sup>

[18th October, 1907.]

An Act further to amend the Local Authorities Loan Act, 1879.

XI of 1879. WHEREAS it is expedient further to amend the <sup>2</sup>Local Authorities Loan Act, 1879; It is hereby enacted as follows :—

1. This Act may be called the Local Authorities Loan (Amendment) Short title. Act, 1907.

XI of 1879. 2. In section 3 of the Local Authorities Loan Act, 1879, the word “and” Definition of “work”. before the word “funds” shall be omitted, and after the words “vested in such authority” the following shall be inserted, namely, “and ‘work’ includes a survey whether incidental to any other work or not”.

3. In clause (a) of the proviso to section 8 of the said Act after the Amendment of section 8. words “Port of Bombay” the words “or Karachi” shall be inserted.

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<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1906, Pt. V, p. 53; for Report of Select Committee, *see* *ibid.*, 1907, Pt. V, p. 221 and for Proceedings in Council, *see* *ibid.*, 1906, Pt. VI, p. 128; *ibid.*, 1907, Pt. VI, p. 147.

<sup>2</sup> Genl. Acts, Vol III.



ACT No. VI OF 1907.<sup>1</sup>

[1st November, 1907.]

An Act to make better provision for the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to make better provision for the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity ; It is hereby enacted as follows :

Short title  
and extent.

1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1907.

(2) It extends to the whole of British India, but shall have operation only in such Provinces as the Governor General in Council may from time to time notify in the Gazette of India.

Power of  
Local Gov-  
ernment to  
notify pro-  
claimed  
areas.

2. (1) The Local Government may, by notification in the local official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government from making any further notifications in respect of the same area from time to time as it may think fit.

Definition.

3. (1) In this Act, the expression "public meeting" means a meeting which is open to the public or any class or portion of the public.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

(3) A meeting of more than twenty persons shall be presumed to be a public meeting within the meaning of this Act until the contrary is proved.

Notice to be  
given of  
public  
meetings.

4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement or of any political subject or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in any proclaimed area—

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Superintendent of Police or the Commissioner of Police, as the case may be, at least three days previously ; or

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 228 ; for Report of Select Committee, see *ibid*, p. 231 and for Proceedings in Council, see *ibid*, Pt. VI, pp. 148 and 154.

<sup>2</sup> For notification declaring that the Act shall have operation in the province of Eastern Bengal and Assam see Gazette of India, 1907, Pt. I, p. 1996.

(b) unless permission to hold such meeting has been obtained in writing from the District Superintendent of Police or the Commissioner of Police, as the case may be.

(2) Any officer of Police, not below the rank of an Inspector, may, by order in writing, depute one or more Police-officers or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings. Power of Police to take report

(3) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority or to public meetings convened by a Sheriff or to any public meetings or class of public meetings exempted for that purpose by the Local Government by general or special order. Exception.

5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time by order in writing, of which public notice shall forthwith be given prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity. Power to prohibit public meetings.

6. (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. Penalties.

XLV of 1860  
V of 1898.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the <sup>1</sup>Indian Penal Code and of Chapter IX of the <sup>2</sup>Code of Criminal Procedure, 1898.

7. Whoever, in a proclaimed area, in a public place or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement or on any political subject, to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both. Penalty for delivery of speeches in public places.

8. (1) The regulation of Meetings Ordinance, 1907, is hereby superseded. Repeal.

(2) Nothing contained in this Act shall affect—

the previous operation of the said Ordinance or anything duly done or suffered thereunder ; or  
any obligation or liability incurred under the said Ordinance , or

Ordinance  
No.1 of  
1907.

<sup>1</sup> Genl. Acts, Vol. I.

<sup>2</sup> Genl. Acts, Vol. V.

any punishment incurred in respect of any offence committed against the said Ordinance ; or

any investigation or legal proceeding in respect of any such obligation, liability or punishment as aforesaid ;

and any such investigation or legal proceeding may be instituted or continued and any such punishment may be imposed as if the said Ordinance had not been superseded or had not expired.

Duration of  
Act.

9. This Act shall continue in force until the expiration of three years next after the passing thereof.

ACT No. I OF 1908.<sup>1</sup>

[3rd January, 1908.]

## An Act further to amend the Legal Practitioners Act, 1879.

WHEREAS it is expedient further to amend the Legal Practitioners Act, 1879 ; it is hereby enacted as follows :—

XVIII of  
1879.

1. This Act may be called the Legal Practitioners (Amendment) Act, 1908. Short title.

XVIII of  
1879.

2. In section 4 of the <sup>2</sup>Legal Practitioners Act, 1879, the following amendments shall be made, namely :— Amendment of section 4 of Act XVIII of 1879.

(a) after the words “this Act” the words “or enrolled as a Pleader in the Chief Court of the Punjab under section 8 of this Act” shall be inserted ; and

(b) after the words “no such Vakil” the words “or Pleader” shall be added.

3. To section 7 of the said Act the following shall be added, namely :—

“Provided that, on the admission as a Pleader of any person who has been previously entered as a Vakil or Attorney on the roll of a High Court established by Royal Charter, the High Court may in its discretion issue to such person a certificate authorising him to practise permanently in the Courts and in the offices specified therein, and a certificate so issued shall not require to be renewed under this section.” Addition to section 7 of Act XVIII of 1879.

4. To section 25 of the said Act the following shall be added, namely :—

“Provided also that no stamped paper shall be required in the case of a certificate whether original or renewed authorising, under section 7, a Vakil or Attorney on the roll of a High Court established by Royal Charter to practise as a Pleader.” Amendment of section 25 of Act XVIII of 1879.

5. In section 38 of the said Act, “7” shall be added after “5” and “25” after “16”. Amendment of section 38 of Act XVIII of 1879.

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1907, Pt. V, p. 230, and for Proceedings in Council, *see* *ibid*, 1907, Pt. VI, p. 150, and *ibid*, 1908, p. 2.

<sup>2</sup> Genl. Acts, Vol. III.

ACT No. II OF 1908.<sup>1</sup>

[3rd January, 1908.]

An Act further to amend the Indian Tariff Act, 1894.

WHEREAS it is expedient further to amend the <sup>2</sup>Indian Tariff Act, 1894 ; VIII of 1894.  
It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Tariff (Amendment) Act, 1908.

Amendment  
of Schedule  
III of Act  
VIII of 1894.

2. In No. 1 of Schedule III of the Indian Tariff Act, 1894, as amended VIII of 1894.  
by the Indian Tariff Act (1894) Amendment Act, 1896, “ annas 2 ” shall be III of 1896.  
substituted for “ anna 1 ” in the fourth column as the rate of duty to be  
levied and collected per Imperial gallon or six quart bottles of ale, beer,  
porter, cider and other fermented liquors.

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<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt IV, p. 3, and for Proceedings in Council, *see ibid*, 1908, Pt. VI, p. 4.

<sup>2</sup> Genl. Acts, Vol. IV.

ACT No. III OF 1908.<sup>1</sup>

[17th January, 1908.]

## An Act further to amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient further to amend the law relating to Private Trusts and Trustees; It is hereby enacted as follows :—

1. This Act may be called the Indian Trusts (Amendment) Act, Short title. 1908.

II of 1882.

2. For clause (d) of section 20 of the <sup>2</sup>Indian Trusts Act, 1882, the following clause shall be substituted, namely :—

Amendment  
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Act II of  
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“(d) in debentures or other securities for money issued, under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;”.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1907, Pt. V, p. 225, and for Proceedings in Council, see *ibid*, 1907, Pt. VI, p. 146, and *ibid*, 1908, p. 8.

<sup>2</sup> Genl. Acts, Vol. III.

ACT No. IV OF 1908.<sup>1</sup>

[14th February, 1908.]

An Act further to amend the Coroners Act, 1871, and the Prisoners Act, 1900.

WHEREAS it is expedient further to amend the <sup>2</sup>Coroners Act, 1871, and the <sup>3</sup>Prisoners Act, 1900 ; It is hereby enacted as follows :—

IV of 1871.  
III of 1900.

Short title.

1. This Act may be called the Coroners (Amendment) Act, 1908.

\* \* \* \* \*

Amendment  
of Act III  
of 1900,  
section 11.

13 In section 11 of the Prisoners Act, 1900, for the words "Justice of the Peace or Coroner" the words "or Justice of the Peace" shall be substituted.

III of 1900.

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1907, Pt. V, p 2 ; for Report of Select Committee, *see* *ibid*, 1908, Pt V, p 31, and for Proceedings in Council, *see* *ibid*, 1907, Pt VI, p 6, *ibid*, 1908, pp 8, 10 and 12.

<sup>2</sup> Ben. Code, Bom. Code.

<sup>3</sup> General Acts, Vol. V.

<sup>4</sup> Sections 2 to 12 which amend the Coroners Act, 1871, are omitted. *see* Bom. Code, Vol. IV. Addendum.

## THE CODE OF CIVIL PROCEDURE, 1908.

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## (Preliminary.)

ACT No. V OF 1908.<sup>1</sup>

[21st March, 1908.]

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature ; It is hereby enacted as follows :—

*Preliminary.*

1. (1) This Act may be cited as the Code of Civil Procedure, 1908.
- (2) It shall come into force on the first day of January, 1909.
- (3) This section and sections 155 to 158 extend to the whole of British India : the rest of the Code extends to the whole of British India, except the Scheduled Districts.

Short title,  
commence-  
ment and  
extent.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “ Code ” includes rules :

(2) “ decree ” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

*Explanation.*—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final :

(3) “ decree-holder ” means any person in whose favour a decree has been passed or an order capable of execution has been made :

(4) “ district ” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “ District Court ”), and includes the local limits of the ordinary original civil jurisdiction of a High Court :

<sup>1</sup> For Statement of Objects and Reasons, see *Gazette of India*, 1907, Pt. V, p. 179 ; for Report of Select Committee, see *ibid*, 1908, Pt. V, p. 35, and for Proceedings in Council, see *ibid*, 1907, Pt. VI, p. 135, *ibid*, 1908, pp. 3, 12, and 212.

As to extension of Code to Scheduled Districts and other local areas, see note at the end of this Volume



## (Preliminary.)

(5) "foreign Court" means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor General in Council :

(6) "foreign judgment" means the judgment of a foreign Court :

(7) "Government Pleader" includes any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader :

(8) "Judge" means the presiding officer of a Civil Court :

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order :

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made :

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession :

(13) "moveable property" includes growing crops :

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree :

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court :

(16) "prescribed" means prescribed by rules :

(17) "public officer" means a person falling under any of the following descriptions, namely :—

(a) every Judge ;

(b) every member of the Indian Civil Service ;

(c) every commissioned or gazetted officer in the military or naval forces of His Majesty, including His Majesty's Indian Marine Service, while serving under the Government ;

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make,

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<sup>1</sup>For appointments made by the Government of the Punjab, see Punjab Gazette, 1909, Pt. I, p. 12.

authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties ;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government ; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty :

(18) “ rules ” means rules and forms contained in the First Schedule or made under section 122 or section 125 :

(19) “ share in a corporation ” shall be deemed to include stock, debenture stock, debentures or bonds : and

(20) “ signed,” save in the case of a judgment or decree, includes stamped.

3. For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

Subordina-  
tion of  
Courts.

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

Savings.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may

have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

Application  
of the Code  
to Revenue  
Courts.

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the Local official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the Local Government, with the sanction aforesaid, may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

Pecuniary  
jurisdiction.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Provincial  
Small Cause  
Courts.

7. The following provisions shall not extend to Courts constituted under IX of 1887. the Provincial Small Causes Courts Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

- (a) so much of the body of the Code as relates to—
  - (i) suits excepted from the cognizance of a Court of Small Causes ;
  - (ii) the execution of decrees in such suits ;
  - (iii) the execution of decrees against immoveable property ; and
- (b) the following sections, that is to say,—
  - section 9,
  - sections 91 and 92,
  - sections 94 and 95 so far as they relate to injunctions and interlocutory orders, and
  - sections 96 to 112 and 115.

Presidency  
Small Cause  
Courts.

8. Save as provided in sections 24, 38 to 41, 7b, clauses (a), (b) and (c), XV of 1882. 76, 77 and 155 to 158, and by the Presidency Small Cause Courts Act, 1882, the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

<sup>1</sup> Genl. Acts, Vol. IV.

<sup>2</sup> Genl. Acts, Vol. III.

## PART I.

## SUITS IN GENERAL.

*Jurisdiction of the Courts and Res judicata.*

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Courts to try  
all civil suits  
unless barred.

*Explanation.*—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor General in Council and having like jurisdiction, or before His Majesty in Council.

Stay of suit.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Res judicata.

*Explanation I.*—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

*Explanation II.*—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

*Explanation III.*—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

*Explanation IV.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

## (Part I.—Suits in General.)

*Explanation V.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

*Explanation VI.*—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further suit.

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

When foreign judgment not conclusive.

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction ;
- (b) where it has not been given on the merits of the case ;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable ;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice ;
- (e) where it has been obtained by fraud ;
- (f) where it sustains a claim founded on a breach of any law in force in British India.

Presumption as to foreign judgments.

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record ; but such presumption may be displaced by proving want of jurisdiction.

*Place of Suing.*

Courts in which suits to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property with or without rent or profits,
- (b) for the partition of immoveable property,

## (Part I.—Suits in General.)

- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

*Explanation.*—In this section “property” means property situate in British India.

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Suits for immoveable property situate within jurisdiction of different Courts.

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the

## (Part I.—Suits in General.)

Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suits for compensation for wrongs to person or moveables.

19. Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

*Illustrations.*

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

Other suits to be instituted where defendants reside or cause of action arises.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain ; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution ; or

(c) the cause of action, wholly or in part, arises.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

*Explanation II.*—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

*Illustrations.*

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, here the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue

*(Part I.—Suits in General.)*

B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides ; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

Objections to jurisdiction.

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Power to transfer suits which may be instituted in more than one Court.

23. (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

To what Court application lies.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

General power of transfer and withdrawal.

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
  - (i) try or dispose of the same ; or
  - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or
  - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.



*(Part I.—Suits in General.)*

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

Power of  
Governor  
General in  
Council to  
transfer suits.

25. (1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the Governor General in Council, who may, by notification in the Gazette of India, transfer such suit, appeal or proceeding to any other High Court.

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case.

## INSTITUTION OF SUITS.

Institution of  
suits.

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

## SUMMONS AND DISCOVERY.

Summons to  
defendants

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

Service of  
summons  
where de-  
fendant  
resides in  
another pro-  
vince.

28. (1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province.

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

Service of  
foreign  
summonses.

29. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts :

*(Part I.—Suits in General.)*

Provided that the Courts issuing such summonses have been established or continued by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

Power to order discovery and the like.

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence ;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;
- (c) order any fact to be proved by affidavit

31. The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

Summons to witness.

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

Penalty for default.

- (a) issue a warrant for his arrest ;
- (b) attach and sell his property ;
- (c) impose a fine upon him not exceeding five hundred rupees ;
- (d) order him to furnish security for his appearance and in default commit him to the civil prison.

## JUDGMENT AND DECREE.

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Judgment and decree.

## INTEREST.

34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Interest.

<sup>1</sup> For notification applying the section to Courts in Ceylon and the Straits Settlements, see Gazette of India, 1909, Pt. I, p. 152; for notifications under the corresponding section (650 A) of the old Code, see Gen. R. and O.

## (Part I.—Suits in General. Part II.—Execution.)

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

## Costs.

## Costs.

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

## PART II.

## EXECUTION.

## General.

## Application to orders.

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

## Definition of Court which passed a decree.

37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
- (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

## Courts by which decrees may be executed.

## Court by which decree may be executed.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

## (Part II.—Execution.)

39. (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

Transfer of  
decree.

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Where a decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province.

Transfer of  
decree to  
Court in  
another  
province.

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

Result of  
execution-  
proceedings  
to be  
certified.

42. The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Powers of  
Court in  
executing  
transferred  
decree.

43. Any decree passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India.

Execution of  
decrees  
passed by  
British  
Courts in  
places to  
which this  
Part does  
not extend  
or in foreign  
territory.

44. The Governor General in Council may, by notification in the Gazette of India, declare that the decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in alliance with His Majesty and

Execution of  
decrees  
passed by  
Courts of  
Native States.

not established or continued by the authority of the Governor General in Council, or any class of such decrees, may be executed in British India as if they had been passed by the Courts of British India.

Execution of  
decrees in  
foreign  
territory.

45. So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.

Precepts.

46. (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

*Questions to be determined by Court executing decree.*

Questions to  
be determined  
by the Court  
executing  
decree.

47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

*Explanation.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

## (Part II.—Execution.)

*Limit of time for execution.*

48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

Execution  
barred in  
certain cases.

- (a) the date of the decree sought to be executed, or,
- (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application; or
- (b) to limit or otherwise affect the operation of article 180 of the second schedule to the Indian Limitation Act, 1877.<sup>1</sup>

XV of 1877.

*Transferees and legal representatives.*

49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Transferee.

50. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Legal re-  
presentative.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

*Procedure in execution.*

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

Powers of  
Court to  
enforce  
execution.

- (a) by delivery of any property specifically decreed;

<sup>1</sup> See now the Indian Limitation Act, 1908 (IX of 1908), Sch. I, art. 183, *infra*.

## (Part II.—Execution.)

(b) by attachment and sale or by sale without attachment of any property ;

(c) by arrest and detention in prison ;

(d) by appointing a receiver ; or

(e) in such other manner as the nature of the relief granted may require.

Enforcement  
of decree  
against legal  
representa-  
tive.

52. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

Liability of  
ancestral  
property.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Partition of  
estate or  
separation of  
share.

54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

*Arrest and detention.*

Arrest and  
detention.

55. (1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Local Government may appoint for the detention of persons ordered by the Courts of such district to be detained :

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise :

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-

*(Part II.—Execution.)*

debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found :

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest :

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Local Government may, by notification in the local official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Local Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court shall release him from arrest, and if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

56. Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

Prohibition of arrest or detention of women in execution of decree for money.

57. The Local Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

Subsistence-allowance.



## (Part II.—Execution.)

Detention  
and release.

58. (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

- (a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,
- (b) in any other case for a period of six weeks :

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- (ii) on the decree against him being otherwise fully satisfied, or
- (iii) on the request of the person on whose application he has been so detained, or
- (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence-allowance :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

Release on  
ground of  
illness.

59. (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

- (a) by the Local Government, on the ground of the existence of any infectious or contagious disease, or
- (b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

*Attachment.*

Property  
liable to at-  
tachment and  
sale in  
execution of  
decree.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and,

## (Part II.—Execution.)

save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale, namely :—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;
- (b) tools of artizans, and where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section ;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ;
- (d) books of account ;
- (e) a mere right to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette of India by the Governor General in Council in this behalf, and political pensions ;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty ;
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—
  - (i) the whole of the salary, where the salary does not exceed twenty rupees monthly ;
  - (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and

## (Part II.—Execution.)

- (iii) one moiety of the salary in any other case ;
- (j) the pay and allowances of persons to whom the <sup>1</sup>Indian Articles of War of 1869. V of 1869.  
War apply ;
- (k) all compulsory deposits and other sums in or derived from any fund to which the <sup>2</sup>Provident Funds Act, 1897, for the time being applies IX of 1897.  
in so far as they are declared by the said Act not to be liable to attachment ;
- (l) the wages of labourers and domestic servants whether payable in money or in kind ;
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;
- (n) a right to future maintenance ;
- (o) any allowance declared by any law passed under the <sup>3</sup>Indian Council Acts, 1861 and 1892, to be exempt from liability to attachment 24 & 25 Vict., c. 67 ; 55 & 56 Vict., c. 14.  
or sale in execution of a decree : and,
- (p) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

- (a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or

- (b) to affect the provisions of the <sup>4</sup>Army Act or of any similar law for the time being in force. 44 & 45 Vict., c. 58.

Partial  
exemption  
of agricul-  
tural produce.

61. The Local Government, with the previous sanction of the Governor General in Council, may, by general or special order published in the local official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Local Government to be

<sup>1</sup> General Acts, Vol. II.

<sup>2</sup> General Acts, Vol. IV.

<sup>3</sup> Coll. Stat., Vols. I, II respectively.

<sup>4</sup> Coll. Stat., Vol. II.

## (Part II.—Execution.)

necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

62. (1) No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise.

Seizure of property in dwelling-house.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

63. (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of several Courts.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

*Explanation.*—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

*Sale.*

65. Where immoveable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Purchaser's title.

## (Part II.—Execution.)

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Power for Local Government to make rules as to sales of land in execution of decrees for payment of money.

67. The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value.

*Delegation to Collector of power to execute decrees against immoveable property.*

Power to prescribe rules for transferring to Collector execution of certain decrees.

68. The Local Government may, with the previous sanction of the Governor General in Council, declare, by notification in the local official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector.

Provisions of Third Schedule to apply.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

Rules of procedure.

70. (1) The Local Government may make rules consistent with the aforesaid provisions—

- (a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court ;
- (b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector ;

*(Part II.—Execution.)*

(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to<sup>1</sup> appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

Jurisdiction  
of Civil Court  
barred.

71. In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.

Collector  
deemed to  
be acting  
judicially.

72. (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

Where Court  
may au-  
thorize  
Collector to  
stay public  
sale of land.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

*Distribution of assets.*

73. (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons.

Proceeds of  
execution-  
sale to be  
rateably  
distributed  
among de-  
cree-holders.

Provided as follows :—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale ;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the

<sup>1</sup> For rules providing for appeals in the Punjab from the orders of a Collector or the gazetted subordinate of a Collector in certain cases, see Punjab Gazette, 1909, Pt. I, p. 12.

## (Part II.—Execution.)

mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold ;

- (c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale ;

secondly, in discharging the amount due under the decree ;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any) ; and,

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

*Resistance to execution.*

Resistance to  
execution.

74. Where the Court is satisfied that the holder of a decree for the possession of immoveable property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property

## PART III.

## INCIDENTAL PROCEEDINGS.

*Commissions.*

Power of  
Court to issue  
commissions.

75. Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

(a) to examine any person ;

(b) to make a local investigation ;

(Part III.—Incidental Proceedings. Part IV.—Suits in Particular Cases.)

(c) to examine or adjust accounts, or

(d) to make a partition.

76. (1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a province other than the province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides. Commission to another Court.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

77. In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within British India. Letter of request.

78. The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by— Commissions issued by foreign Courts.

(a) Court situate beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with His Majesty.

#### PART IV.

##### SUITS IN PARTICULAR CASES.

*Suits by or against the Government or Public Officers in their official capacity.*

79. (1) Suits by or against the Government shall be instituted by or against the Secretary of State for India in Council. Suits by or against Government.

(2) Nothing in this section shall be deemed to limit or otherwise affect any information exhibited by the Advocate General in exercise of the power declared by section 111 of the <sup>1</sup> East India Company Act, 1813.



*(Part IV.—Suits in Particular Cases.)*

Notice.

80. No suit shall be instituted against the Secretary of State for India in Council, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Exemption  
from arrest  
and personal  
appearance.

81. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

Execution of  
decree

82. (1) Where the decree is against the Secretary of State for India in Council or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

*Suits by Aliens and by or against Foreign and Native Rulers.*When aliens  
may sue.

83. (1) Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty.

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of sub-section (2), be deemed to be an alien enemy residing in a foreign country.

When foreign  
States may  
sue.

84. (1) A foreign State may sue in any Court of British India :

Provided that such State has been recognized by His Majesty or by the Governor General in Council :

*(Part IV.--Suits in Particular Cases.)*

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor General in Council.

85. (1) Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

86. (1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of the Governor General in Council certified by the signature of a Secretary to the Government of India, but no without such consent, be sued in any competent Court

Suits against Princes, Chiefs, ambassadors and envoys.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued ; but it shall not be given unless it appears to the Government that the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under

(*Part IV.—Suits in Particular Cases. Part V.—Special Proceedings.*)

this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) The Governor General in Council may, by notification in the Gazette of India, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

Style of  
Princes and  
Chiefs as  
parties to  
suits.

87. A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State :

Provided that in giving the consent referred to in the foregoing section the Governor General in Council or the Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

#### *Interpleader.*

Where inter-  
pleader-suit  
may be in-  
stituted.

88. Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself :

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

### PART V.

#### SPECIAL PROCEEDINGS.

##### *Arbitration.*

Arbitration.

89. (1) Save in so far as is otherwise provided by the <sup>1</sup> Indian Arbitration Act, 1899, or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and

IX of 1899.

<sup>1</sup> General Acts, Vol. V.

*(Part V.—Special Proceedings.)*

all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule.

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code.

*Special Case.*

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

Power to state case for opinion of Court.

*Suits relating to Public Matters.*

91. (1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

Public nuisances.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

Public charities.

- (a) removing any trustee ;
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust ;
- (f) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged ;
- (g) settling a scheme ; or
- (h) granting such further or other relief as the nature of the case may require.

## (Part VI.—Supplemental Proceedings.)

(2) Save as provided by the <sup>1</sup>Religious Endowments Act, 1863, no suit <sup>XX of 1863.</sup> claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

Exercise of  
powers of  
Advocate  
General out-  
side Presi-  
dency-towns.

93. The powers conferred by sections 91 and 92 on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the <sup>2</sup>Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

## PART VI.

## SUPPLEMENTAL PROCEEDINGS.

Supplemental  
proceedings.

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison ;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property ;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold ;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property ;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Compensation for  
obtaining  
arrest,  
attachment  
or injunction  
on insufficient  
grounds.

95. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

- (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or
  - (b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,
- the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him :

<sup>1</sup> Genl. Acts, Vol. I.

<sup>2</sup> For notification by the Government of Eastern Bengal and Assam, see E. B. and A. Gazette, 1909, Pt. I, p. 392.

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

## PART VII.

### APPEALS.

#### *Appeals from Original Decrees.*

96. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

Appeal from original decree.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Appeal from final decree where no appeal from preliminary decree.

98. (1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

Decision where appeal heard by two or more Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ, in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal, including those who first heard it.

99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

#### *Appeals from Appellate Decrees.*

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to

Second appeal.

the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely :—

- (a) the decision being[contrary to law or to some usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or usage having the force of law ;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

Second appeal  
on no other  
grounds.

101. No second appeal shall lie except on the grounds mentioned in section 100.

No second  
appeal in  
certain suits.

102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

Power of  
High Court  
to determine  
issues of fact.

103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the Lower Appellate Court.

#### *Appeals from Orders.*

Orders from  
which appeal  
lies.

104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force from no other orders :—

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court ;
- (b) an order on an award stated in the form of a special case ;
- (c) an order modifying or correcting an award ;
- (d) an order filing or refusing to file an agreement to refer to arbitration ;
- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration ;
- (f) an order filing or refusing to file an award in an arbitration without the intervention of the Court ;
- (g) an order under section 95 ;
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree ;

(i) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.

105. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in exercise of its original or appellate jurisdiction ; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. Other orders.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court. What Courts to hear appeals.

*General Provisions relating to Appeals.*

107. (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power— Powers of Appellate Court.

(a) to determine a case finally ;

(b) to remand a case ;

(c) to frame issues and refer them for trial ;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals— Procedure in appeals from appellate decree and orders.

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

*Appeals to the King in Council.*

109. Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council— When appeals lie to King in Council.

(a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction ;



(b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction ; and

(c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

Value of  
subject-  
matter.

110. In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

Bar of certain  
appeals.

111. Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council—

(a) from the decree or order of one Judge of a High Court established under the <sup>1</sup> Indian High Courts Act, 1861, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being ; or

24 & 25 Vict.,  
c. 104.

(b) from any decree from which under section 102 no second appeal lies.

Savings.

112. (1) Nothing contained in this Code shall be deemed—

(a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

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<sup>1</sup> Coll. Stat., Vol. I.

(Part VIII.—Reference, Review and Revision. Part IX.—Special Provisions relating to the Chartered High Courts.)

## PART VIII.

### REFERENCE, REVIEW AND REVISION.

113. Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit. Reference to High Court.

114. Subject as aforesaid, any person considering himself aggrieved— Review.

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears— Revision.

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

## PART IX.

### SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS.

24 & 25 Vict.,  
c. 104.

116. This Part applies only to High Courts which are or may hereafter be established under the,<sup>1</sup> Indian High Courts Act, 1861.

Part to apply only to certain High Courts.

117. Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts.

Application of Code to High Courts.

118. Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by

Execution of decree before ascertainment of costs.

<sup>1</sup> Coll. Stat., Vol. I.

(Part IX.—*Special Provisions relating to the Chartered High Courts.*

*Part X.—Rules.*)

taxation, the Court may order that the decree shall be executed forth with except as to so much thereof as relates to the costs ;

and as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Unauthorized persons not to address Court.

119. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

Provisions not applicable to High Court in original civil or insolvent jurisdiction.

120. (1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

(2) Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

## PART X.

### RULES.

Effect of rule in First Schedule.

121. The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Power of certain High Courts to make rules.

122. High Courts established under the <sup>1</sup> Indian High Courts Act, 1861, and the Chief Courts of the Punjab and Lower Burma, may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

<sup>24 & 25</sup>  
Vict., c. 104.

Constitution of Rule Committees in certain provinces

123. (1) A Committee, to be called the Rule Committee, shall be constituted at each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon.

(2) Each such Committee shall consist of the following persons, namely :—

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or (in the Punjab or Burma) a Divisional Judge for three years,

*(Part X.—Rules.)*

- (b) a barrister practising in that Court,
  - (c) an advocate (not being a barrister) or vakil or pleader enrolled in that Court,
  - (d) a Judge of a Civil Court subordinate to the High Court, and
  - (e) in the towns of Calcutta, Madras and Bombay, an attorney.
- (3) The members of each such Committee shall be appointed by the Chief Justice or Chief Judge, who shall also nominate one of their number to be president :

Provided that, if the Chief Justice or Chief Judge elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice or Chief Judge shall be the President of the Committee.

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice or Chief Judge in this behalf ; and whenever any member retires, resigns, dies or ceases to reside in the province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice or Chief Judge may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice or Chief Judge and shall receive such remuneration as may be provided in this behalf by the Governor General in Council or by the Local Government, as the case may be.

14. Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under section 122 the High Court shall take such report into consideration.

Committee  
to report to  
High Court.

125. High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions as the Governor General in Council may determine :

Power of  
other High  
Courts to  
make rules.

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

126. Rules made under the foregoing provisions shall be subject to the previous sanction of the following authorities, namely :—

Rules subject  
to sanction.

- (a) if the rule is made by a High Court established under the <sup>1</sup> Indian High Courts Act, 1861, to the sanction of the authority prescribed by section 15 of that Act for rules made under that section ;

24 & 25 Vict.,  
c. 104.

<sup>1</sup> Coll. Stat., Vol. I.

- (b) if the rule is made by any other High Court, to the sanction of the Local Government.

Publication  
of rules.

127. Rules so made and sanctioned shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

Matters for  
which rules  
may provide.

128. (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely :—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas and the proof of such service ;
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property and the proceeds of such sale ;
- (c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction ;
- (d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts ;
- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not ;
- (f) summary procedure—
  - (1) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
    - on a contract express or implied ; or
    - on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty ; or
    - on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only ; or
    - on a trust ; or

## (Part X.—Rules.—Part XI.—Miscellaneous.)

(ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant ;

(g) procedure by way of originating summons ;

(h) consolidation of suits, appeals and other proceedings ;

(i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties ;  
and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

24 & 52  
Vict., c. 104.

129. Notwithstanding any thing in this Code, any High Court established under the <sup>1</sup>Indian High Courts Act, 1861, may make such rules not inconsistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

Power of  
Chartered  
High Courts  
to make  
rules as to  
their original  
civil proce-  
dure.

24 & 25 Vict.,  
c. 104.

130. A High Court not established under the <sup>1</sup>Indian High Courts Act, 1861, may, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might, under section 15 of that Act, make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town.

Power of  
other High  
Courts to  
make rules  
as to matters  
other than  
procedure.

131. Rules made in accordance with section 129 or section 130 shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the force of law.

Publication  
of rules.

## PART XI.

## MISCELLANEOUS.

132. (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

Exemption  
of certain  
women from  
personal ap-  
pearance.

(1) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

<sup>1</sup> Coll. Stat., Vol. I.

## (Part XI.—Miscellaneous.)

Examination  
of other  
persons.

**133.** (1) The Local Government may, by notification in the local official Gazette,<sup>1</sup> exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

(2) The names and residences of the persons, so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Arrest other  
than in  
execution of  
decree.

**134.** The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code

Exemption  
from arrest  
under civil  
process.

**135.** (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

Procedure  
where person  
to be arrested  
or property  
to be  
attached is  
outside  
district.

**136.** (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the

<sup>1</sup> For such notifications see Punjab Gazette, 1909, Pt. I, p. 13; Bombay Govt. Gazette, 1909, Pt. I, p. 89.

## (Part XI.—Miscellaneous.)

local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court, shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal or at Madras or at Bombay, or of the Chief Court of Lower Burma, the copy of the warrant of arrest or of the order of attachment, and the probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

137. (1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the Local Government otherwise directs.

Language of  
subordinate  
Courts.

(2) The Local Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

138. (1) The Local Government may, by notification in the local official Gazette, direct, with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which

Power for  
Local Gov-  
ernment to  
require evi-



## (Part XI.—Miscellaneous.)

dence to be  
recorded in  
English.

an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

Oath on  
affidavit by  
whom to be  
administered.

139. In the case of any affidavit under this Code—

(a) any Court or Magistrate, or

(b) any officer or other person whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath to the deponent.

Assessors in  
causes of  
salvage, etc.

140. (1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

Miscellaneous  
proceedings.

141. The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Orders and  
notices to be  
in writing.  
Postage.

142. All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

143. Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

Application  
for resti-  
tution.

144. (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or

<sup>1</sup> For notification empowering Courts of the District Judge in the Punjab to appoint an officer subordinate to itself to administer oaths to process-servers, bailiffs, etc., see Punjab Gazette, 1909, Pt. I, p. 13.

## (Part XL.—Miscellaneous.)

reversed ; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

145. Where any person has become liable as surety—

Enforcem  
of liabilit  
of surety

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47 :

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

146. Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

Proceedi  
by or ag  
represent  
tives.

147. In all suits to which any person under disability is a party, any consent or agreement as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

Consent  
agreement  
persons u  
disability

148. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Enlargem  
of time.

149. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee ; and upon such payment the document in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Power to  
make up  
deficiency  
court-fee

## (Part XI.—Miscellaneous.)

Transfer of  
business.

150. Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Saving of  
inherent  
powers of  
Court.

151. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Amendment  
of judgments,  
decrees or  
orders.

152. Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

General  
power to  
amend.

153. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Saving of  
present right  
of appeal.

154. Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.

Amendment  
of certain  
Acts.

155. The enactments mentioned in the Fourth Schedule are hereby amended to the extent specified in the fourth column thereof.

Repeals.

156. The enactments mentioned in the Fifth Schedule are hereby repealed to the extent specified in the fourth column thereof.

Continuance  
of orders  
under re-  
pealed enact-  
ments.

157. Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed, shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Reference to  
Code of Civil  
Procedure  
and other  
repealed  
enactments.

158. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

## THE FIRST SCHEDULE.

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### ORDER I.

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#### *Parties to Suits.*

#### RULES.

1. Who may be joined as plaintiffs
2. Power of Court to order separate trials.
3. Who may be joined as defendants.
4. Court may give judgment for or against one or more of joint parties.
5. Defendant need not be interested in all the relief claimed
6. Joinder of parties liable on same contract.
7. When plaintiff in doubt from whom redress is to be sought.
8. One person may sue or defend on behalf of all in same interest.
9. Misjoinder and nonjoinder.
10. Suit in name of wrong plaintiff  
Court may strike out or add parties.  
Where defendant added, plaint to be amended.
11. Conduct of suit.
12. Appearance of one of several plaintiffs or defendants for others.
13. Objections as to nonjoinder or misjoinder.

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### ORDER II

#### *Frame of Suit.*

1. Frame of suit.
2. Suit to include the whole claim.  
Relinquishment of part of claim.  
Omission to sue for one of several reliefs.
3. Joinder of causes of action.
4. Only certain claims to be joined for recovery of immoveable property.
5. Claims by or against executor, administrator or heir.
6. Power of Court to order separate trials.
7. Objections as to misjoinder.

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### ORDER III.

#### *Recognized Agents and Pleadors.*

1. Appearances, etc., may be in person, by recognized agent or by pleader.
2. Recognized agents.

## RULES.

3. Service of process on recognized agent.
4. Appointment of pleader.
5. Service of process on pleader.
6. Agent to accept service.  
Appointment to be in writing and to be filed in Court.

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ORDER IV.*Institution of Suits.*

1. Suit to be commenced by plaintiff.
2. Register of suits.

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ORDER V.*Issue and Service of Summons.**Issue of Summons.*

1. Summons.
2. Copy or statement annexed to summons.
3. Court may order defendant or plaintiff to appear in person.
4. No party to be ordered to appear in person unless resident within certain limits.
5. Summons to be either to settle issues or for final disposal.
6. Fixing day for appearance of defendant.
7. Summons to order defendant to produce documents relied on by him.
8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

*Service of Summons.*

9. Delivery or transmission of summons for service.
10. Mode of service.
11. Service on several defendants.
12. Service to be on defendant in person when practicable, or on his agent
13. Service on agent by whom defendant carries on business.
14. Service on agent in charge in suits for immoveable property.
15. Where service may be on male member of defendant's family.
16. Person served to sign acknowledgment.
17. Procedure when defendant refuses to accept service, or cannot be found.
18. Endorsement of time and manner of service.
19. Examination of serving officer.

## RULES.

20. Substituted service.  
Effect of substituted service.  
Where service substituted, time for appearance to be fixed.
21. Service of summons where defendant resides within jurisdiction of another Court.
22. Service, within Presidency-towns and Rangoon, of summons issued by Courts outside.
23. Duty of Court to which summons is sent.
24. Service on defendant in prison.
25. Service where defendant resides out of British India and has no agent.
26. Service in foreign territory through Political Agent or Court.
27. Service on civil public officer or on servant of railway company or local authority.
28. Service on soldiers.
29. Duty of person to whom summons is delivered or sent for service.
30. Substitution of letter for summons.

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ORDER VI.*Pleadings generally.*

- 1 Pleading.
2. Pleading to state material facts and not evidence.
3. Forms of pleading.
4. Particulars to be given where necessary.
5. Further and better statement, or particulars.
6. Condition precedent.
7. Departure.
8. Denial of contract.
9. Effect of document to be stated.
10. Malice, knowledge, etc.
11. Notice.
12. Implied contract, or relation.
13. Presumptions of law.
14. Pleading to be signed.
15. Verification of pleadings.
16. Striking out pleadings.
17. Amendment of pleadings.
18. Failure to amend after order.

## ORDER VII.

*Plaint.*

## RULES.

1. Particulars to be contained in plaint.
2. In money suits.
3. Where the subject-matter of the suit is immoveable property.
4. When plaintiff sues as representative.
5. Defendant's interest and liability to be shown.
6. Grounds of exemption from limitation law.
7. Relief to be specifically stated.
8. Relief founded on separate grounds.
9. Procedure on admitting plaint.  
Concise statements.
10. Return of plaint.  
Procedure on returning plaint.
11. Rejection of plaint.
12. Procedure on rejecting plaint.
13. Where rejection of plaint does not preclude presentation of fresh  
plaint.

*Documents relied on in plaint.*

14. Production of document on which plaintiff sues.  
List of other documents.
15. Statement in case of documents not in his possession or power
16. Suits on lost negotiable instruments.
17. Production of shop-book.  
Original entry to be marked and returned.
18. Inadmissibility of document not produced when plaint filed

## ORDER VIII.

*Written Statement and Set-off.*

1. Written statement.
2. New facts must be specially pleaded.
3. Denial to be specific.
4. Evasive denial.
5. Specific denial.
6. Particulars of set-off to be given in written statement.  
Effect of set-off.
7. Defence or set-off founded on separate grounds.
8. New ground of defence.

## RULES.

9. Subsequent pleadings.
10. Procedure when party fails to present written statement called for by Court.

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ORDER IX.*Appearance of Parties and Consequence of Non-appearance.*

1. Parties to appear on day fixed in summons for defendant to appear and answer.
2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.
3. Where neither party appears, suit to be dismissed.
4. Plaintiff may bring fresh suit or Court may restore suit to file.
5. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.
6. Procedure when only plaintiff appears.  
When summons duly served.  
When summons not duly served.  
When summons served, but not in due time.
7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.
8. Procedure where defendant only appears.
9. Decree against plaintiff by default bars fresh suit.
10. Procedure in case of non-attendance of one or more of several plaintiffs.
11. Procedure in case of non-attendance of one or more of several defendants.
12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

*Setting aside Decrees ex parte.*

13. Setting aside decree *ex parte* against defendant.
14. No decree to be set aside without notice to opposite party.

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ORDER X.*Examination of Parties by the Court.*

1. Ascertainment whether allegations in pleadings are admitted or denied.
2. Oral examination of party, or companion of party.
3. Substance of examination to be written.
4. Consequence of refusal or inability of pleader to answer.



## ORDER XI.

*Discovery and Inspection.*

## RULES.

1. Discovery by interrogatories.
2. Particular interrogatories to be submitted.
3. Costs of interrogatories.
4. Form of interrogatories.
5. Corporations.
6. Objections to interrogatories by answer.
7. Setting aside and striking out interrogatories.
8. Affidavit in answer, filing.
9. Form of affidavit in answer.
10. No exception to be taken.
11. Order to answer or answer further.
12. Application for discovery of documents.
13. Affidavit of documents.
14. Production of documents.
15. Inspection of documents referred to in pleading or affidavits.
16. Notice to produce.
17. Time for inspection when notice given.
18. Order for inspection.
19. Verified copies.
20. Premature discovery.
21. Non-compliance with order for discovery.
22. Using answers to interrogatories at trial.
23. Order to apply to minors.

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ORDER XII.*Admissions.*

1. Notice of admission of case.
2. Notice to admit documents.
3. Form of notice.
4. Notice to admit facts.
5. Form of admissions.
6. Judgment on admissions.
7. Affidavit of signature.
8. Notice to produce documents.
9. Costs.

## ORDER XIII.

*Production, Impounding and Return of Documents.*

## RULES.

1. Documentary evidence to be produced at first hearing.
2. Effect of non-production of documents.
3. Rejection of irrelevant or inadmissible documents
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts and records.
6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from its own records or from other Courts.
11. Provisions as to documents applied to material objects.

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ORDER XIV.*Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*

1. Framing of issues.
2. Issues of law and of fact.
3. Materials from which issues may be framed.
4. Court may examine witnesses or documents before framing issues.
5. Power to amend and strike out issues.
6. Questions of fact or law may by agreement be stated in form of issues.
7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

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ORDER XV.*Disposal of the suit at the first hearing.*

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
4. Failure to produce evidence.

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ORDER XVI.*Summoning and Attendance of Witnesses*

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.

## RULES.

Experts.

Scale of expenses.

3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in  
Expenses of witnesses detained more than one day.
5. Time, place and purpose of attendance to be specified in summons.
6. Summons to produce document.
7. Power to require persons present in Court to give evidence or produce document.
8. Summons how served.
9. Time for serving summons.
10. Procedure where witness fails to comply with summons
11. If witness appears, attachment may be withdrawn.
12. Procedure if witness fails to appear.
13. Mode of attachment.
14. Court may of its own accord summon as witnesses strangers to suit.
15. Duty of persons summoned to give evidence or produce document.
16. When they may depart.
17. Application of rules 10 to 13.
18. Procedure where witness apprehended cannot give evidence or produce document.
9. No witness to be ordered to attend in person unless resident within certain limits.
20. Consequence of refusal of party to give evidence when called on by Court.
21. Rules as to witnesses to apply to parties summoned.

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ORDER XVII.

*Adjournments.*

1. Court may grant time and adjourn hearing.  
Costs of adjournment.
2. Procedure if parties fail to appear on day fixed.
3. Court may proceed notwithstanding either party fails to produce evidence, etc.

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ORDER XVIII.

*Hearing of the suit and Examination of Witnesses.*

1. Right to begin.

## RULES.

2. Statement and production of evidence.
3. Evidence where several issues.
4. Witnesses to be examined in open Court.
5. How evidence shall be taken in appealable cases.
6. When deposition to be interpreted
7. Evidence under section 138.
8. Memorandum when evidence not taken down by Judge.
9. When evidence may be taken in English.
10. Any particular question and answer may be taken down.
11. Questions objected to and allowed by Court.
12. Remarks on demeanour of witnesses.
13. Memorandum of evidence in unappealable cases.
14. Judge unable to make such memorandum to record reasons of his inability.
15. Power to deal with evidence taken before another Judge.
16. Power to examine witness immediately.
17. Court may recall and examine witness.
18. Power of Court to inspect.

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ORDER XIX.*Affidavits.*

1. Power to order any point to be proved by affidavit.
2. Power to order attendance of deponent for cross-examination.
3. Matters to which affidavits shall be confined.

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ORDER XX.*Judgment and Decree.*

1. Judgment when pronounced
2. Power to pronounce judgment written by Judge's predecessor.
3. Judgment to be signed.
4. Judgments of Small Cause Courts.  
Judgments of other Courts.
5. Court to state its decision on each issue.
6. Contents of decree.
7. Date of decree.
8. Procedure where Judge has vacated office before signing decree.

**RULES.**

9. Decree for recovery of immovable property.
10. Decree for delivery of moveable property.
11. Decree may direct payment by instalments.  
Order, after decree, for payment by instalments.
12. Decree for possession and mesne profits.
13. Decree in administration-suit.
14. Decree in pre-emption-suit.
15. Decree in suit for dissolution of partnership.
16. Decree in suit for account between principal and agent.
17. Special directions as to accounts.
18. Decree in suit for partition of property or separate possession of a share therein.
19. Decree when set-off is allowed.  
Appeal from decree relating to set-off.
20. Certified copies of judgment and decree to be furnished.

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**ORDER XXI.***Execution of Decrees and Orders.**Payment under Decree.*

1. Modes of paying money under decree.
2. Payment out of Court to decree-holder.

*Courts executing Decrees.*

3. Lands situate in more than one jurisdiction.
4. Transfer to Court of Small Causes.
5. Mode of transfer.
6. Procedure where Court desires that its own decree shall be executed by another Court.
7. Court receiving copies of decree, etc., to file same without proof.
8. Execution of decree or order by Court to which it is sent.
9. Execution by High Court of decree transferred by other Court.

*Application for execution.*

10. Application for execution.
11. Oral application.  
Written application.

## RULES.

12. Application for attachment of moveable property not in judgment-debtor's possession.
13. Application for attachment of immoveable property to contain certain particulars.
14. Power to require certified extract from Collector's register in certain cases.
15. Application for execution by joint decree-holder.
16. Application for execution by transferee of decree.
17. Procedure on receiving application for execution of decree.
18. Execution in case of cross-decrees.
19. Execution in case of cross-claims under same decree.
20. Cross-decrees and cross-claims in mortgage-suits.
21. Simultaneous execution.
22. Notice to show cause against execution in certain cases.
23. Procedure after issue of notice.

*Process for execution.*

24. Process for execution.
25. Endorsement on process.

*Stay of execution.*

26. When Court may stay execution.  
Power to require security from, or impose conditions upon, judgment-debtor.
27. Liability of judgment-debtor discharged.
28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.
29. Stay of execution pending suit between decree-holder and judgment debtor.

*Mode of execution.*

30. Decree for payment of money.
31. Decree for specific moveable property.
32. Decree for specific performance for restitution of conjugal rights or for an injunction.
33. Discretion of Court in executing decrees for restitution of conjugal rights.
34. Decree for execution of document, or endorsement of negotiable instrument.
35. Decree for immoveable property.

## RULES.

36. Decree for delivery of immoveable property when in occupancy of tenant.

*Arrest and detention in the civil prison.*

37. Discretionary power to permit judgment-debtor to show cause against detention in prison.  
38. Warrant for arrest to direct judgment-debtor to be brought up.  
39. Subsistence-allowance.  
40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

*Attachment of property.*

41. Examination of judgment-debtor as to his property.  
42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.  
43. Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor.  
44. Attachment of agricultural produce.  
45. Provisions as to agricultural produce under attachment.  
46. Attachment of debt, share and other property not in possession of judgment-debtor.  
47. Attachment of share in moveables.  
48. Attachment of salary or allowances of public officer or servant of railway company or local authority.  
49. Attachment of partnership property.  
50. Execution of decree against firm.  
51. Attachment of negotiable instruments.  
52. Attachment of property in custody of Court or public officer.  
53. Attachment of decrees.  
54. Attachment of immoveable property.  
55. Removal of attachment after satisfaction of decree.  
56. Order for payment of coin or currency notes to party entitled under decree.  
57. Determination of attachment.

*Investigation of claims and objections.*

58. Investigation of claims to, and objections to attachment of, attached property.  
Postponement of sale.

## RULES.

- 59. Evidence to be adduced by claimant.
- 60. Release of property from attachment.
- 61. Disallowance of claim to property attached.
- 62. Continuance of attachment subject to claim of incumbrancer.
- 63. Saving of suits to establish right to attached property.

*Sale generally.*

- 64. Power to order property attached to be sold and proceeds to be paid to person entitled.
- 65. Sales by whom conducted and how made.
- 66. Proclamation of sales by public auction.
- 67. Mode of making proclamation.
- 68. Time of sale.
- 69. Adjournment or stoppage of sale.
- 70. Saving of certain sales.
- 71. Defaulting purchaser answerable for loss on re-sale.
- 72. Decree-holder not to bid for or buy property without permission.  
Where decree-holder purchases, amount of decree may be taken as payment.
- 73. Restriction on bidding or purchase by officers.

*Sale of moveable property.*

- 74. Sale of agricultural produce.
- 75. Special provisions relating to growing crops.
- 76. Negotiable instruments and shares in corporations.
- 77. Sale by public auction.
- 78. Irregularity not to vitiate sale, but any person injured may sue.
- 79. Delivery of moveable property, debts and shares.
- 80. Transfer of negotiable instruments and shares.
- 81. Vesting order in case of other property.

*Sale of immoveable property.*

- 82. What Courts may order sales.
- 83. Postponement of sale to enable judgment-debtor to raise amount of decree.
- 84. Deposit by purchaser and re-sale on default.
- 85. Time for payment in full of purchase-money.
- 86. Procedure in default of payment\*.
- 87. Notification on re-sale.



## RULES.

88. Bid of co-sharer to have preference
89. Application to set aside sale on deposit.
90. Application to set aside sale on ground of irregularity or fraud.
91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.
92. Sale when to become absolute or be set aside.
93. Return of purchase-money in certain cases.
94. Certificate to purchaser.
95. Delivery of property in occupancy of judgment-debtor.
96. Delivery of property in occupancy of tenant.

*Resistance to delivery of possession to decree-holder or purchaser.*

97. Resistance or obstruction to possession of immoveable property.
98. Resistance or obstruction by judgment-debtor.
99. Resistance or obstruction by *bonâ fide* claimant.
100. Dispossession by decree-holder or purchaser.
101. *Bonâ fide* claimant to be restored to possession.
102. Rules not applicable to transferees *lité pendenté*.
103. Orders conclusive subject to regular suit

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ORDER XXII.

*Death, Marriage and Insolvency of Parties.*

1. No abatement by party's death, if right to sue survives.
2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.
3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.
4. Procedure in case of death of one of several defendants or of sole defendant.
5. Determination of question as to legal representative.
6. No abatement by reason of death after hearing.
7. Suit not abated by marriage of female party.
8. When plaintiff's insolvency bars suit.  
Procedure where assignee fails to continue suit or give security.
9. Effect of abatement or dismissal.
10. Procedure in case of assignment before final order in suit.
11. Application of Order to appeals.

## RULES.

12. Application of Order to proceedings.

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ORDER XXIII.

*Withdrawal and Adjustment of Suits.*

1. Withdrawal of suit or abandonment of part of claim.
2. Limitation law not affected by first suit.
3. Compromise of suit.
4. Proceedings in execution of decrees not affected.

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ORDER XXIV.

*Payment into Court.*

1. Deposit by defendant of amount in satisfaction of claim.
2. Notice of deposit.
3. Interest on deposit not allowed to plaintiff after notice.
4. Procedure where plaintiff accepts deposit as satisfaction in part.
5. Procedure where he accepts it as satisfaction in full.

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ORDER XXV.

*Security for costs.*

1. When security for costs may be required from plaintiff.  
Residence out of British India.
2. Effect of failure to furnish security.

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ORDER XXVI.

COMMISSIONS.

*Commissions to examine witnesses.*

1. Cases in which Court may issue commission to examine witness.
2. Order for commission.
3. Where witness resides within Court's jurisdiction.
4. Persons for whose examination commission may issue.
5. Commission or Request to examine witness not within British  
India.
6. Court to examine witness pursuant to commission.

## RULES.

7. Return of commission with depositions of witnesses.
8. When depositions may be read in evidence.

*Commissions for local investigations.*

9. Commissions to make local investigations.
10. Procedure of Commissioner.  
Report and depositions to be evidence in suit.  
Commissioner may be examined in person.

*Commissions to examine accounts.*

11. Commission to examine or adjust accounts.
12. Court to give Commissioner necessary instructions.  
Proceedings and report to be evidence.  
Court may direct further inquiry.

*Commissions to make partitions.*

13. Commission to make partition of immoveable property.
14. Procedure of Commissioner.

*General provisions.*

15. Expenses of commission to be paid into Court.
16. Powers of Commissioners.
17. Attendance and examination of witnesses before Commissioner.
18. Parties to appear before Commissioner.

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**ORDER XXVII.***Suits by or against the Government or Public Officers in their official capacity.*

1. Suits by or against Government.
2. Persons authorized to act for Government.
3. Plaints in suits by or against Government.
4. Agent for Government to receive process.
5. Fixing of day for appearance on behalf of Government.
6. Attendance of person able to answer questions relating to suit against Government.
7. Extension of time to enable public officer to make reference to Government.
8. Procedure in suits against public officer.

## RULES.

## ORDER XXVIII.

*Suits by or against Military Men.*

1. Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.
2. Persons so authorized may act personally or appoint pleader.
3. Service on person so authorized, or on his pleader, to be good service.

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ORDER XXIX.*Suits by or against Corporations.*

1. Subscription and verification of pleading.
2. Service on corporation.
3. Power to require personal attendance of officer of corporation.

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ORDER XXX.*Suits by or against Firms and Persons carrying on business in names other than their own.*

1. Suing of partners in name of firm.
2. Disclosure of partners' names.
3. Service.
4. Right of suit on death of partner.
5. Notice in what capacity served.
6. Appearance of partners.
7. No appearance except by partners.
8. Appearance under protest.
9. Suits between co-partners.
10. Suit against person carrying on business in name other than his own.

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ORDER XXXI.*Suits by or against Trustees, Executors and Administrators.*

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.
2. Joinder of trustees, executors and administrators.
3. Husband of married executrix not to join.

## RULES.

## ORDER XXXII.

*Suits by or against Minors and Persons of Unsound Mind.*

1. Minor to sue by next friend.
2. Where suit is instituted without next friend, plaint to be taken off the file.
3. Guardian for the suit to be appointed by Court for minor defendant.
4. Who may act as next friend or be appointed guardian for the suit.
5. Representation of minor by next friend or guardian for the suit.
6. Receipt by next friend or guardian for the suit of property under decree for minor.
7. Agreement or compromise by next friend or guardian for the suit.
8. Retirement of next friend.
9. Removal of next friend.
10. Stay of proceedings on removal, etc., of next friend.
11. Retirement, removal or death of guardian for the suit.
12. Course to be followed by minor plaintiff or applicant on attaining majority.
13. Where minor co-plaintiff attaining majority desires to repudiate suit.
14. Unreasonable or improper suit.
15. Application of rules to persons of unsound mind.
16. Saving for Princes and Chiefs.

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ORDER XXXIII.*Suits by Paupers.*

1. Suits may be instituted *in forma pauperis*.
2. Contents of application.
3. Presentation of application.
4. Examination of applicant.  
If presented by agent, Court may order applicant to be examined by commission.
5. Rejection of application.
6. Notice of day for receiving evidence of applicant's pauperism.
7. Procedure at hearing.
8. Procedure if application admitted.
9. Dispaupering.
10. Costs where pauper succeeds.
11. Procedure where pauper fails.
12. Government may apply for payment of court-fees.

## RULES.

13. Government to be deemed a party.
14. Copy of decree to be sent to Collector.
15. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.
16. Costs.

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ORDER XXXIV.

*Suits relating to Mortgages of Immoveable Property.*

1. Parties to suits for foreclosure, sale and redemption.
2. Preliminary decree in foreclosure-suit.
3. Final decree in foreclosure-suit.  
Power to enlarge time.  
Discharge of debt.
4. Preliminary decree in suit for sale.  
Power to decree sale in foreclosure-suit.
5. Final decree in suit for sale.
6. Recovery of balance due on mortgage.
7. Preliminary decree in redemption-suit.
8. Final decree in redemption-suit.  
Power to enlarge time.
9. Decree where nothing is found due or where mortgagee has been overpaid.
10. Costs of mortgagee subsequent to decree.
11. Right of mesne mortgagee to redeem and foreclose.
12. Sale of property subject to prior mortgage.
13. Application of proceeds.
14. Suit for sale necessary to bring mortgaged property to sale.
15. Charges.

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ORDER XXXV.

*Interpleader.*

1. Complaint in interpleader-suit.
2. Payment of thing claimed into Court.
3. Procedure where defendant is suing plaintiff.
4. Procedure at first hearing.
5. Agents and tenants may not institute interpleader-suits.
6. Charge for plaintiff's costs.

## RULES.

## ORDER XXXVI.

*Special Case.*

1. Power to state case for Court's opinion.
2. Where value of subject-matter must be stated.
3. Agreement to be filed and registered as suit.
4. Parties to be subject to Court's jurisdiction.
5. Hearing and disposal of case.

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ORDER XXXVII.*Summary Procedure on Negotiable Instruments.*

1. Application of Order.
2. Institution of summary suits upon bills of exchange, etc.
3. Defendant showing defence on merits to have leave to appear.
4. Power to set aside decree.
5. Power to order bill, etc., to be deposited with officer of Court.
6. Recovery of cost of noting non-acceptance of dishonoured bill or note.
7. Procedure in suits.

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ORDER XXXVIII.

## ARREST AND ATTACHMENT BEFORE JUDGMENT.

*Arrest before judgment.*

1. Where defendant may be called upon to furnish security for appearance.
2. Security.
3. Procedure on application by surety to be discharged.
4. Procedure where defendant fails to furnish security or find fresh security.

*Attachment before judgment.*

5. Where defendant may be called upon to furnish security for production of property.
6. Attachment where cause not shown or security not furnished.
7. Mode of making attachment.
8. Investigation of claim to property attached before judgment.
9. Removal of attachment when security furnished or suit dismissed.
10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.

## RULES.

11. Property attached before judgment not to be re-attached in execution of decree.
12. Agricultural produce not attachable before judgment.

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**ORDER XXXIX.****TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.***Temporary injunctions.*

1. Cases in which temporary injunction may be granted
2. Injunction to restrain repetition or continuance of breach
3. Before granting injunction, Court to direct notice to opposite party.
4. Order for injunction may be discharged, varied or set aside
5. Injunction to corporation binding on its officers.

*Interlocutory orders.*

6. Power to order interim sale.
7. Detention, preservation, inspection, etc., of subject-matter of suit
8. Application for such orders to be after notice.
9. When party may be put in immediate possession of land the subject-matter of suit.
10. Deposit of money, etc., in Court.

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**ORDER XL.***Appointment of Receivers.*

1. Appointment of receivers.
2. Remuneration.
3. Duties.
4. Enforcement of receiver's duties.
5. When Collector may be appointed receiver.

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**ORDER XLI.***Appeals from Original Decrees.*

1. Form of appeal.  
What to accompany memorandum.  
Contents of memorandum.
2. Grounds which may be taken in appeal.
3. Rejection or amendment of memorandum.



## RULES.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

*Stay of proceedings and of execution.*

5. Stay by Appellate Court.  
Stay by Court which passed the decree.
6. Security in case of order for execution of decree appealed from.
7. No security to be required from the Government or a public officer in certain cases.
8. Exercise of powers in appeal from order made in execution of decree.

*Procedure on admission of appeal.*

9. Registry of memorandum of appeal.  
Register of appeals.
10. Appellate Court may require appellant to furnish security for costs.  
Where appellant resides out of British India.
11. Power to dismiss appeal without sending notice to Lower Court.
12. Day for hearing appeal.
13. Appellate Court to give notice to Court whose decree appealed from.  
Transmission of papers to Appellate Court.  
Copies of exhibits in Court whose decree appealed from.
14. Publication and service of notice of day for hearing appeal.  
Appellate Court may itself cause notice to be served.
15. Contents of notice.

*Procedure on hearing.*

16. Right to begin.
17. Dismissal of appeal for appellant's default.  
Hearing appeal *ex parte*.
18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.
19. Re-admission of appeal dismissed for default.
20. Power to adjourn hearing, and direct persons appearing interested to be made respondents.
21. Re-hearing on application of respondent against whom *ex parte* decree made.
22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.  
Form of objection and provisions applicable thereto.
23. Remand of case by Appellate Court.

## RULES.

24. Where evidence on record sufficient, Appellate Court may determine case finally.
25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.
26. Findings and evidence to be put on record.  
Objections to finding.  
Determination of appeal.
27. Production of additional evidence in Appellate Court.
28. Mode of taking additional evidence.
29. Points to be defined and recorded.

*Judgment in appeal.*

30. Judgment when and where pronounced.
31. Contents, date and signature of judgment.
32. What judgment may direct.
33. Power of Court of Appeal.
34. Dissent to be recorded.

*Decree in appeal.*

35. Date and contents of decree.  
Judge dissenting from judgment need not sign decree.
36. Copies of judgment and decree to be furnished to parties.
37. Certified copy of decree to be sent to Court whose decree appealed from.

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ORDER XLII.*Appeals from Appellate Decrees.*

1. Procedure.

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ORDER XLIII.*Appeals from Orders.*

1. Appeals from orders.
2. Procedure.

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ORDER XLIV.*Pauper Appeals.*

1. Who may appeal as pauper.  
Procedure on application for admission of appeal.
2. Inquiry into pauperism.

## RULES.

## ORDER XLV.

*Appeals to the King in Council.*

1. "Decree" defined.
2. Application to Court whose decree complained of.
3. Certificate as to value or fitness.
4. Consolidation of suits.
5. Remission of dispute to Court of first instance.
6. Effect of refusal of certificate.
7. Security and deposit required on grant of certificate.
8. Admission of appeal and procedure thereon.
9. Revocation of acceptance of security
10. Power to order further security or payment.
11. Effect of failure to comply with order
12. Refund of balance deposit.
13. Powers of Court pending appeal.
14. Increase of security found inadequate.
15. Procedure to enforce orders of King in Council.
16. Appeal from order relating to execution.

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ORDER XLVI.*Reference.*

1. Reference of question to High Court.
2. Court may pass decree contingent upon decision of High Court.
3. Judgment of High Court to be transmitted, and case disposed of accordingly.
4. Costs of reference to High Court.
5. Power to alter, etc., decree of Court making reference.
6. Power to refer to High Court questions as to jurisdiction in small causes.
7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

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ORDER XLVII.*Review.*

1. Application for review of judgment.
2. To whom applications for review may be made.
3. Form of applications for review.

## RULES.

4. Application where rejected.  
Application where granted.
5. Application for review in Court consisting of two or more Judges.
6. Application where rejected.
7. Order of rejection not appealable.  
Objections to order granting application.
8. Registry of application granted, and order for re-hearing.
9. Bar of certain applications.

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ORDER XLVIII.
*Miscellaneous.*

1. Process to be served at expense of party issuing.  
Costs of service.
2. Orders and notices how served.
3. Use of forms in appendices.

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ORDER XLIX.
*Chartered High Courts.*

1. Who may serve process of High Courts.
2. Saving in respect of Chartered High Court.
3. Application of rules.

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ORDER L.
*Provincial Small Cause Courts.*

1. Provincial Small Cause Courts.

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ORDER LI.
*Presidency Small Cause Courts.*

1. Presidency Small Cause Courts.

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APPENDICES TO THE FIRST SCHEDULE.
*Forms.*

## A.—PLEADINGS.

1. Titles of suits.
2. Description of parties in particular cases.

## RULES.

3. Plaints.

4. Written statements.

B.—Process.

C.—Discovery, Inspection and Admission.

D.—Decrees.

E.—Execution.

F.—Supplemental Proceedings.

G.—Appeal, Reference and Review.

H.—Miscellaneous.

## THE FIRST SCHEDULE.

### ORDER I.

#### *Parties to Suits.*

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise. Who may be joined as plaintiffs.
2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient. Power of Court to order separate trials.
3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise. Who may be joined as defendants.
4. Judgment may be given without any amendment—
  - (a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to ;
  - (b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.Court may give judgment for or against one or more of joint parties.
5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him. Defendant need not be interested in all the relief claimed.
6. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes. Joinder of parties liable on same contract.
7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties. When plaintiff in doubt from whom redress is to be sought.
8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such

One person may sue or defend on behalf of all in same interest.

*(The First Schedule.—Order I.—Parties to Suits.)*

service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

Misjoinder  
and non-  
joinder.

9. No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit in name  
of wrong  
plaintiff.

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Court may  
strike out  
or add par-  
ties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

Where de-  
fendant  
added,  
plaint to be  
amended.

(4) Where a defendant is added, the plaint shall unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the <sup>1</sup> Indian Limitation Act, 1877, section XV of 1877. 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

Conduct of  
suit.

11. The Court may give the conduct of the suit to such person as it deems proper.

Appearance  
of one of se-  
veral plaint-

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than

<sup>1</sup> See now the Indian Limitation Act, 1908 (IX of 1908), s 22, *infra*.

*(The First Schedule.—Order II.—Frame of Suit.)*

one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

iffs or defend-  
ants for  
others.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

13. All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Objections as  
to nonjoin-  
der or mis-  
joinder.

## ORDER II.

*Frame of Suit.*

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

Frame of suit.

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to in-  
clude the  
whole claim.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquish-  
ment of part  
of claim.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Omission to  
sue for one  
of several  
reliefs.

*Explanation.*—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

*Illustration.*

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1903 only for the rent due for 1903. A shall not afterwards sue B for the rent due for 1905 or 1907.

3. (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

Joinder of  
causes of  
action.



*(The First Schedule.—Order III.—Recognized Agents and Pleadors.)*

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.

Only certain claims to be joined for recovery of immoveable property.

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property except—

- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof ;
- (b) claims for damages for breach of any contract under which the property or any part thereof is held ; and
- (c) claims in which the relief sought is based on the same cause of action :

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

Claims by or against executor, administrator or heir.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Power of Court to order separate trials.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

Objections as to misjoinder.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

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### ORDER III.

#### *Recognized Agents and Pleadors.*

Appearances, etc., may be in person, by recognized agent or by pleader.

1. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent or by a pleader duly appointed to act on his behalf :

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

(*The First Schedule.—Order III.—Recognized Agents and Pleadors.*)

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are— Recognized agents.

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs. Service of process on recognized agent.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

4. (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by power-of-attorney to act in this behalf. Appointment of pleader.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

(3) No advocate of any High Court established under the<sup>1</sup> Indian High Courts Act, 1861 or of any Chief Court, and no advocate of any other High Court who is a barrister shall be required to present any document empowering him to act.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person. Service of process on pleader.

6. (1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process. Agent to accept service.

24 & 25 Vict.,  
c. 104.

<sup>1</sup> Coll. Stat., Vol. .

(The First Schedule.—Order IV.—Institution of Suits.—Order V.—  
Issue and Service of Summons.)

**Appointment to be in writing and to be filed in Court.** (2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

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ORDER IV.

*Institution of Suits.*

**Suit to be commenced by plaint.** 1. (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

**Register of suits.** 2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the complaints are admitted.

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ORDER V.

ISSUE AND SERVICE OF SUMMONS.

*Issue of Summons.*

**Summons.** 1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

**Copy or statement annexed to summons.** 2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

**Court may order defendant or plaintiff to appear in person.** 3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

*(The First Schedule.—Order V.—Issue and Service of Summons.)*

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party shall be ordered to appear in person unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction  
or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

No party to be ordered to appear in person unless resident within certain limits.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit ; and the summons shall contain a direction accordingly ;

Summons to be either to settle issues or for final disposal.

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons ; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Fixing day for appearance of defendant.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

Summons to order defendant to produce documents relied on by him.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

*Service of Summons.*

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

Delivery or transmission of summons for service.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.

Mode of service.

*(The First Schedule.—Order V.—Issue and Service of Summons.)*

Service on several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer

Service on agent in charge in suits for immoveable property.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on male member of defendant's family.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

*Explanation.*—A servant is not a member of the family within the meaning of this rule.

Person served to sign acknowledgment.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did

*(The First Schedule.—Order V.—Issue and Service of Summons.)*

so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Endorsement  
of time and  
manner of  
service.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Examination  
of serving  
officer.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Substituted  
service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of sub-  
stituted ser-  
vice.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Where service  
substituted,  
time for ap-  
pearance to  
be fixed.

21. A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Service of  
summons  
where defen-  
dant resides  
within juris-  
diction of  
another Court.

22. Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

Service with-  
in Presidency-  
towns and  
Rangoon, of  
summons is-  
sued by  
Courts out-  
side.

*(The First Schedule.—Order V.—Issue and Service of Summons)*

Duty of Court to which summons is sent.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

Service on defendant in prison.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

Service where defendant resides out of British India and has no agent.

25. Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service in foreign territory through Political Agent or Court.

26. Where—

(a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(b) the Governor General in Council has, by notification in the Gazette of India, declared that any summons so issued may be served by any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid,

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant ; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed such endorsement shall be deemed to be evidence of service.

Service on civil public officer or on servant of railway company or local authority.

27. Where the defendant is a public officer (not belonging to His Majesty's military or naval forces or His Majesty's Indian Marine Service), or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Service on soldiers.

28. Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

*(The First Schedule.—Order VI.—Pleadings generally.)*

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

Duty of person to whom summons is delivered or sent for service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

Substitution of letter for summons.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

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## ORDER VI.

### *Pleadings generally.*

1. "Pleading" shall mean plaint or written statement.

Pleading.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

Pleading to state material facts and not evidence.

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

Forms of pleading.

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

Particulars to be given where necessary.



*(The First Schedule.—Order VI.—Pleadings generally.)*

Further and better statement, or particulars.

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Condition precedent.

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be ; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Departure.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Denial of contract.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Effect of document to be stated.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Malice, knowledge, etc

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Notice.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Implied contract, or relation.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law.

13. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon

(*The First Schedule.*—*Order VI.—Pleadings generally. Order VII—Plaint.*)

the other side unless the same has first been specifically denied (*e.g.*, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

14. Every pleading shall be signed by the party and his pleader (if any) : Pleading to be signed.  
 Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Verification of pleadings.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit. Striking out pleadings.

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Amendment of pleadings.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court. Failure to amend after order.

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## ORDER VII.

### *Plaint.*

1. The plaint shall contain the following particulars :—

- (a) the name of the Court in which the suit is brought ;
- (b) the name, description and place of residence of the plaintiff ;

Particulars to be contained in plaint.

*(The First Schedule. Order VII.—Plaint.)*

- (c) the name, description and place of residence of the defendant, so far as they can be ascertained ;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect ;
- (e) the facts constituting the cause of action and when it arose ;
- (f) the facts showing that the Court has jurisdiction ;
- (g) the relief which the plaintiff claims ;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished ; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

In money  
suits.

2. Where the plaintiff seeks the recovery of money, the plaintiff shall state the precise amount claimed :

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaintiff shall state approximately the amount sued for.

Where the  
subject-mat-  
ter of the suit  
is immove-  
able property

3. Where the subject-matter of the suit is immoveable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers.

When plain-  
tiff sues as  
representa-  
tive.

4. Where the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Defendant's  
interest and  
liability to be  
shown.

5. The plaintiff shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Ground of  
exemption  
from limita-  
tion law.

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which exemption from such law is claimed.

Relief to be  
specifically  
stated.

7. Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

*(The First Schedule.—Order VII.—Plaint.)*

8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly. Relief founded on separate grounds.

9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it ; and if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements. Procedure on admitting plaint.  
Concise statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

10. (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. Return of plaint.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it. Procedure on returning plaint.

11. The plaint shall be rejected in the following cases :—

(a) where it does not disclose a cause of action :

(b) where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so :

(d) where the suit appears from the statement in the plaint to be barred by any law. Rejection of plaint.

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order. Procedure on rejecting plaint.

13 The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Where rejection of plaint does not preclude presentation of fresh plaint.

*(The First Schedule.—Order VIII.—Written Statement and set-off**Documents relied on in plaint.)*

Production of document on which plaintiff sues

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

List of other documents

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession or power.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

Suits on lost negotiable instruments.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Production of shop-book.

17. (1) Save in so far as is otherwise provided by the <sup>1</sup> Bankers' Books Evidence Act, 1891, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies. XVIII of 1891.

Original entry to be marked and returned.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification ; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of documents not produced when plaint filed.

18. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

### ORDER VIII.

#### *Written Statement and Set-off.*

Written statement.

1. The defendant may, and if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

<sup>1</sup> Genl. Acts, Vol. IV.

(The First Schedule.—Order VIII.—Written Statement and Set-off.)

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

New fact must be specially pleaded.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Denial to be specific.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

Evasive denial.

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Specific denial.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

6. (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off.

Particulars of set-off to be given in written statement

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off : but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Effect of set off.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

(The First Schedule.—Order VIII.—Written Statement and Set-off.  
Order IX.—Appearance of Parties and Consequence of Non-appearance.)

*Illustrations*

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him on compensation which he claims to set off. The amount not being ascertained cannot be set off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

Defence of set-off founded on separate grounds.

New ground of defence.

Subsequent pleadings.

Procedure when party fails to present written statement called for by Court.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

## ORDER IX.

### *Appearance of Parties and Consequence of Non-appearance.*

Parties to appear on day fixed in summons for defendant to appear and answer.

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

(The First Schedule.—Order IX.—Appearance of Parties and Consequence of Non-appearance.)

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed :

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

3. Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

Where neither party appears, suit to be dismissed.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit ; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Plaintiff may bring fresh suit or Court may restore suit to file.

5. (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

Procedure when only plaintiff appears. When summons duly served. When summons not duly served.

- (a) if it is proved that the summons was duly served, the Court may proceed *ex parte* ;
- (b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant ;
- (c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear

When summons served, but not in due time.



(The First Schedule.—Order IX—*Appearance of Parties and Consequence of Non-appearance.*)

and answer on the day fixed in the summons the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Procedure where defendant only appears.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Decree against plaintiff by default bars fresh suit.

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Procedure in case of non-attendance of one or more of several plaintiffs.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

11. Where there are more defendants than one, and one or more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, with-

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction

*(The First Schedule.—Order X.—Examination of Parties by the Court.)*

of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

out sufficient cause shown, of party ordered to appear in person.

*Setting aside Decrees ex parte.*

13. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Setting aside decree *ex parte* against defendant.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

No decree to be set aside without notice to opposite party.

## ORDER X.

*Examination of Parties by the Court.*

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in pleadings are admitted or denied.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Oral examination of party or companion of party.

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Substance of examination to be written.

4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule (2) refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely

Consequence of refusal or inability of pleader to answer.

*(The First Schedule.—Order XI.—Discovery and Inspection.)*

to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

## ORDER XI.

*Discovery and Inspection.*

Discovery by  
interrogator-  
ies.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Particular  
interrogator-  
ies to be sub-  
mitted.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

Costs of inter-  
rogatories.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form of inter-  
rogatories.

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

Corporations.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party

*(The First Schedule.—Order XI.—Discovery and Inspection.)*

may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bonâ fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer. Objections to interrogatories by answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous ; and any application for this purpose may be made within seven days after service of the interrogatories. Setting aside and striking out interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow. Affidavit in answer, filing.

9. An affidavit in answer to interrogatories shall be in Form No. 3 in Appendix C, with such variations as circumstances may require. Form of affidavit in answer.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court. No exception to be taken

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *vivâ voce* examination, as the Court may direct. Order to answer or answer further.

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs. Application for discovery of documents.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require. Affidavit of documents

*(The First Schedule.—Order XI.—Discovery and Inspection.)*

Production of documents.

14. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of documents referred to in pleadings or affidavits.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Notice to produce.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

Time for inspection when notice given.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Order for inspection.

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party

*(The First Schedule.—Order XI.—Discovery and Inspection.)*

applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

Verified  
copies.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the applications is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Premature  
discovery.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or

Non-compli-  
ance with  
order for  
discovery.

(*The First Schedule.—Order XI.—Discovery and Inspection.*  
*Order XII—Admissions.*)

inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Using answers to interrogatories at trial.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Order to apply to minors.

23. This order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

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## ORDER XII.

### *Admissions.*

Notice of admission of case.

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit documents.

2. Either party may call upon the other party to admit any document saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

Form of notice.

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Notice to admit facts.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not

(The First Schedule.—Order XIII.—Production, Impounding and Return of Documents.)

as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice : Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require. Form of admissions.

6. Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties : and the Court may upon such application make such order, or give such judgment, as the Court may think just. Judgment on admissions.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required. Affidavit of signature.

8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served. Notice to produce documents.

9. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. Costs.

### ORDER XIII.

*Production, Impounding and Return of Documents.*

1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced. Documentary evidence to be produced at first hearing.

(2) The Court shall receive the documents so produced : provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the pro Effect of non-production of documents.



(*The First Schedule.—Order XIII.—Production, Impounding and Return of Documents.*)

ceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof, and the Court receiving any such evidence shall record the reasons for so doing.

Rejection of irrelevant or inadmissible documents.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Endorsements on documents admitted in evidence.

4. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

- (a) the number and title of the suit,
- (b) the name of the person producing the document,
- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted ;

and the endorsement shall be signed or initialled by the Judge

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

Endorsements on copies of admitted entries in books, accounts and records.

5. (1) Save in so far as is otherwise provided by the <sup>1</sup> Bankers' Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

XVIII of 1891.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (a) where the record, book or account is produced on behalf of a party, then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

<sup>1</sup> General Acts, Vol. IV.

(The First Schedule.—Order XIII.—*Production, Impounding and Return of Documents.*)

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

Endorsements on documents rejected as inadmissible in evidence.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

Recording of admitted and return of rejected documents.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Court may order any document to be impounded.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

Return of admitted documents.

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so :

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Court may send for papers from its own records or from other Courts.

*(The First Schedule.—Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.)*

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to documents applied to material objects.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

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#### ORDER XIV.

*Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.*

Framing of issues.

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds : (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Issues of law and of fact.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

(The First Schedule. Order XIV.—Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.)

3. The Court may frame the issues from all or any of the following materials :—

Materials from which issues may be framed.

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties ;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit ;
- (c) the contents of documents produced by either party.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Court may examine witnesses or documents before framing issues.

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

Power to amend, and strike out, issues.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

Questions of fact or law may by agreement be stated in form of issues.

- (a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement ;
- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct ; or
- (c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

Court, if satisfied that agreement was executed

- (a) that the agreement was duly executed by the parties.

(The First Schedule. Order XV.—Disposal of the Suit at the first hearing.)

in good faith,  
may pro-  
nounce judg-  
ment.

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court ;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement ; and, upon the judgment so pronounced, a decree shall follow.

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ORDER XV.

*Disposal of the Suit at the first hearing.*

Parties not  
at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

One of several  
defendants  
not at issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

Parties at  
issue.

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit :

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Failure to  
produce evi-  
dence.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

(The First Schedule. Order XVI.—Summoning and Attendance of Witnesses.)

## ORDER XVI.

*Summoning and Attendance of Witnesses.*

1. (1) At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Summons to attend to give evidence or produce documents.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witness to be paid into Court on applying for summons.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Experts.

(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Scale of expenses.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of expenses to witness.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Procedure where insufficient sum paid in.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.

*(The First Schedule. Order XVI.—Summoning and Attendance of Witnesses.)*

Time, place and purpose of attendance to be specified in summons.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document. Summons how served.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or

(The First Schedule. Order XVI.—Summoning and Attendance of Witnesses.)

without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

If witness appears, attachment may be withdrawn.

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any :

Procedure if witness fails to appear.

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

Mode of attachment.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Court may of its own accord summon as witnesses strangers to suit.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

Duty of persons summoned to give evidence or produce document.



*(The First Schedule. Order XVII.—Adjournment.)*

When they  
may depart.

16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Application  
of rules 10 to  
13.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16

Procedure  
where witness  
apprehended  
cannot give  
evidence or  
produce docu-  
ment.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

No witness to  
be ordered  
to attend in  
person unless  
resident with-  
in certain  
limits.

19. No one shall be ordered to attend in person to give evidence unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

Consequence  
of refusal  
of party to  
give evidence  
when called  
on by Court.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Rules as to  
witnesses to  
apply to par-  
ties sum-  
moned.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

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## ORDER XVII.

### *Adjournments.*

Court may  
grant time  
and adjourn  
hearing.

1. (1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

(*The First Schedule. Order XVII—Adjournment. XVIII.—Hearing of the Suit and Examination of Witnesses.*)

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment : Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit. Procedure if parties fail to appear on day fixed

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may notwithstanding such default, proceed to decide the suit forthwith. Court may proceed notwithstanding either party fails to produce evidence, etc.

### ORDER XVIII.

#### *Hearing of the Suit and Examination of Witnesses.*

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin. Right to begin.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove. Statement and production of evidence.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on Evidence where several issues.

(*The First Schedule. Order XVIII.—Hearing of the Suit and Examination of Witnesses.*)

the evidence so produced by the party beginning ; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

How evidence shall be taken in appealable cases.

5. In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

When deposition to be interpreted.

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

Evidence under section 138.

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

Memorandum when evidence not taken down by Judge.

8. Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

When evidence may be taken in English.

9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

Any particular question and answer may be taken down.

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

Questions objected to and allowed by Court.

11. Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it together with the decision of the Court thereon.

Remarks on demeanour of witnesses.

12. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

(*The First Schedule. Order XVIII.—Hearing of the Suit and Examination of Witnesses.*)

13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length ; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

Memorandum of evidence in unappealable cases.

14. (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Judge unable to make such memorandum to record reasons of his inability.

(2) Every memorandum so made shall form part of the record.

15. (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

Power to deal with evidence taken before another Judge.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

16. (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Power to examine witness immediately.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Courts thinks fit.

Court may recall and examine witness.

18. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

Power of Court to inspect.

(The First Schedule. Order XIX.—Affidavits. Order XX.—Judgment and Decree.)

## ORDER XIX.

*Affidavits.*

Power to order any point to be proved by affidavit.

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of deponent for cross-examination.

2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

Matters to which affidavits shall be confined.

3. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted : provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

## ORDER XX.

*Judgment and Decree.*

Judgment when pronounced.

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge's predecessor.

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

Judgment to be signed.

3. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

*(The First Schedule. Order XX.—Judgment and Decree.)*

4. (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon. Judgments of Small Cause Courts.
- (2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. Judgments of other Courts.
5. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. Court to state its decision on each issue.
6. (1) The decree shall agree with the judgment : it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. Contents of decree.
- (2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.
- (3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.
7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree. Date of decree.
8. Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate. Procedure where Judge has vacated office before signing decree.
9. Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers. Decree for recovery of immovable property.
10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had. Decree for delivery of moveable property.
11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by Decree may direct payment by instalments.

*(The First Schedule. Order XX.—Judgment and Decree.)*

instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

Order, after  
decree, for  
payment by  
instalments.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Decree for  
possession  
and mesne  
profits.

12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree—

- (a) for the possession of the property ;
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits ;
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
  - (i) the delivery of possession to the decree-holder.
  - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or
  - (iii) the expiration of three years from the date of the decree,

whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Decree in  
administration-suit.

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration-suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in

(The First Schedule. Order XX.—Judgment and Decree.)

any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14. (1) Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

Decree in pre-emption-suit.

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct—

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property, including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for dissolution of partnership.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

Decree in suit for account between principal and agent.



## (The First Schedule. Order XX.—Judgment and Decree

## Order XXI.—Execution of Decrees and Orders.)

Special directions as to accounts.

17. The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Decree in suit for partition of property or separate possession of a share therein.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector, deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54 ;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

Decree when set-off is allowed.

19. (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Appeal from decree relating to set-off.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

Certified copies of judgment and decree to be furnished.

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

## ORDER XXI.

## EXECUTION OF DECREES AND ORDERS.

*Payment under Decree.*

Modes of paying money under decree.

1. (1) All money payable under a decree shall be paid as follows, namely :—

(a) into the Court whose duty it is to execute the decree ; or

(*The First Schedule. Order XXI.—Execution of Decrees and Orders.*)

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

Payment out  
of Court to  
decree-holder.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.

#### *Courts executing Decrees.*

3. Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

Lands situate  
in more than  
one jurisdic-  
tion.

4. Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

Transfer to  
Court of  
Small Causes.

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Mode of  
transfer.

6. The Court sending a decree for execution shall send—

(a) a copy of the decree;

Procedure  
where Court  
desires that

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

its own decree shall be executed by another Court.

- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and
- (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Court receiving copies of decree, etc., to file same without proof.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

Execution by High Court of decree transferred by other Court.

9. Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

*Application for Execution.*

Application for execution.

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Oral application.

11. (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

Written application.

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :—

- (a) the number of the suit ;
- (b) the names of the parties ;
- (c) the date of the decree ;
- (d) whether any appeal has been preferred from the decree ;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree ;

(The First Schedule. Order XXI.—Execution of Decrees and Orders.)

- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results ;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed ;
- (h) the amount of the costs (if any) awarded ;
- (i) the name of the person against whom execution of the decree is sought ; and
- (j) the mode in which the assistance of the Court is required whether—
  - (i) by the delivery of any property specifically decreed ;
  - (ii) by the attachment and sale, or by the sale without attachment, of any property ;
  - (iii) by the arrest and detention in prison of any person ;
  - (iv) by the appointment of a receiver ;
  - (v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

12. Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of moveable property not in judgment-debtor's possession.

13. Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall contain at the foot—

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers ; and
- (b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Application for attachment of immoveable property to contain certain particulars.

14. Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest

Power to require certified extract from Collector's register in certain cases.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Application  
for execution  
by joint de-  
cree-holder.

15. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application  
for execution  
by transferee  
of decree.

16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Procedure on  
receiving ap-  
plication for  
execution of  
decree.

17. (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with ; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application :

*(The First Schedule. Order XXI.—Execution of Decrees and Orders)*

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

18. (1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

Execution in case of cross-decree.

(a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless—

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

*Illustrations.*

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

19. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

Execution in case of cross-claims under same decree.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree ; and,
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum, shall be entered upon the decree.

Cross-decrees  
and cross-  
claims in  
mortgage-  
suits.  
Simultaneous  
execution

20. The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

21. The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor

Notice to  
show cause  
against exe-  
cution in cer-  
tain cases.

22. (1) Where an application for execution is made—

- (a) more than one year after the date of the decree, or
- (b) against the legal representative of a party to the decree,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Procedure  
after issue of  
notice.

23. (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

*Process for execution.*

Process for  
execution.

24. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary issue its process for the execution of the decree.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

25. (1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

Endorsement on process.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

*Stay of execution.*

26. (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

When Court may stay execution.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Power to require security from, or impose conditions upon, judgment-debtor.

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

Liability of judgment-debtor discharged.



*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

Stay of execution pending suit between decree-holder and judgment-debtor.

28. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which decree was sent for execution.

29. Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

*Mode of execution.*

Decree for payment of money.

30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Decree for specific moveable property.

31. (1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and in other cases, such compensation as it thinks fit, and shall pay the balance (if any, to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made has been refused, the attachment shall cease.

Decree for specific performance, for restitution of conjugal rights, or for an injunction.

32. (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

*Illustration.*

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

33. (1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree for the restitution of conjugal rights or at any time afterwards, may order that the decree shall not be executed by detention in prison.

(2) Where the Court has made an order under sub-rule (1) and the decree-holder is the wife, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

Discretion of Court in executing decrees for restitution of conjugal rights.

(*The First Schedule. Order XXI.—Execution of Decrees and Orders.*)

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

Decree for execution of document or endorsement of negotiable instrument.

34. (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

“C. D., Judge of the Court of

(*or as the case may be*), for A. B., in a suit by E. F. against A. B.”,

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

35 (1) Where a decree is for the delivery of any immoveable property possession thereof shall be delivered to the party to whom it has been adjudged,

(The First Schedule. Order XXI.—Execution of Decrees and Orders.)

or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immoveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Decree for delivery of immoveable property when in occupancy of tenant.

*Arrest and detention in the civil prison.*

37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

Discretionary power to permit judgment-debtor to show cause against detention in prison.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

38. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

Warrant for arrest to direct judgment-debtor to be brought up.

39. (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge

Subsistence-allowance.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit :

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Proceedings  
on appear-  
ance of  
judgment-  
debtor in  
obedience to  
notice or  
after arrest.

40. (1) Where a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be.

(2) Before making an order under sub-rule (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely :—

- (a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account ;
- (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree ;

(The First Schedule. Order XXI.—Execution of Decrees and Orders.)

- (c) any undue preference given by the judgment-debtor to any of his other creditors ;
- (d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it ;
- (e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.

(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.

4) A judgment-debtor released under this rule may be re-arrested.

(5) Where the Court does not make an order under sub-rule (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison.

#### *Attachment of property.*

41. Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

- (a) the judgment-debtor, or
- (b) in the case of a corporation, any officer thereof, or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree ; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents

Examination of judgment-debtor as to his property.

42. Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.

43. Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the pro-

Attachment of moveable property other than

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

agricultural  
produce, in  
possession of  
judgment-  
debtor.

perty in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof :

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attachment  
of agricul-  
tural produce.

44. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

{a) where such produce is a growing crop, on the land on which such crop has grown, or

{b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain ; and the produce shall thereupon be deemed to have passed into the possession of the Court.

Provisions as  
to agricultur-  
al produce  
under attach-  
ment.

45. (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it ; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered,

(*The First Schedule. Order XXI.—Execution of Decrees and Orders.*)

the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

46. (1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

Attachment  
of debt, share  
and other  
property not  
in possession  
of judgment-  
debtor

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court ;
- (ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;
- (iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

47. Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment  
of share in  
moveables.

48. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount

Attachment  
of salary or  
allowances of  
public officer  
or servant of



*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

railway company or local authority.

shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may, by notification in the Gazette of India or in the local official Gazette, as the case may be, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of His Majesty's Indian revenues or the funds of a railway company carrying on business in any part of British India or local authority in British India; and the Government or the railway company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

Attachment of partnership property.

49. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within British India.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within British India.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

50. (1) Where a decree has been passed against a firm, execution may be granted—

Execution of  
decree against  
firm.

- (a) against any property of the partnership ;
- (b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner ;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear :

IX of 1872. Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the <sup>1</sup> Indian Contract Act, 1872.

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

Attachment  
of negotiable  
instruments.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

Attachment  
of property  
in custody of  
Court or pub-  
lic officer.

**52.** Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued :

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Attachment  
of decrees

**53. (1)** Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(a) if the decrees were passed by the same Court, then by order of such Court, and,

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

him from transferring or charging the same in any way; and, where such decree has been passed by any other Court also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54. (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

Attachment  
of immove-  
able property.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

55. Where—

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Removal of  
attachment  
after satis-  
faction of  
decree.

56. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Order for  
payment of  
coin or cur-  
rency notes  
to party en-  
titled under  
decree.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

Determina-  
tion of attach-  
ment.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

*Investigation of claims and objections.*

Investiga-  
tion of claims  
to, and  
objections to  
attachment  
of, attached  
property.

58. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit :

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postpone-  
ment of sale.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Evidence to  
be adduced  
by claimant.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Release of  
property  
from attach-  
ment.

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property wholly or to such extent as it thinks fit, from attachment.

Disallowance  
of claim to  
property  
attached.

61. Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance  
of attach-  
ment subject  
to claim of  
incum-  
brancer.

62. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property.

*Sale generally.*

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order property attached to be sold and proceeds to be paid to person entitled.

65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Sales by whom conducted and how made.

66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

Proclamation of sales by public auction.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold ;
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government ;
- (c) any incumbrance to which the property is liable ;
- (d) the amount for the recovery of which the sale is ordered ; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

Mode of  
making  
proclama-  
tion.

67. (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the local official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

Time of sale.

68. Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

Adjournment  
or stoppage  
of sale.

69. (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment :

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

Saving of cer-  
tain sales.

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

Defaulting  
purchaser  
answerable  
for loss on  
re-sale.

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.)

**72.** (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid for or buy property without permission.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

Where a decree-holder purchases, amount of decree may be taken as payment.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale ; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

**73.** No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Restriction on bidding or purchase by officers.

*Sale of moveable property.*

**74.** (1) Where the property to be sold is agricultural produce, the sale shall be held,—

Sale of agricultural produce.

- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or,
- (b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited :

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

- (b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day, the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

**75.** (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing

Special provisions relating to growing crops.



(*The First Schedule. Order XXI.—Execution of Decrees and Orders.*)

before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Negotiable  
instruments  
and shares in  
corporations.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Sale by pub-  
lic auction.

77. (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity  
not to vitiate  
sale, but any  
person injur-  
ed may sue.

78. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of  
moveable pro-  
perty, debts  
and shares

79. (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

Transfer of negotiable instruments and shares.

(2) Such execution or endorsement may be in the following form, namely:—

A. B. by C. D., Judge of the Court of (*or as the case may be*), in a suit by E. F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly

Vesting order in case of other property.

*Sale of immoveable property.*

82. Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

What Courts may order sales.

83. (1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

Postponement of sale to enable judgment-debtor to raise amount of decree.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale:

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provision of rule 72, into Court :

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of an mortgage of, or charge on, such property.

Deposit by  
purchaser  
and re-sale on  
default.

84. (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

Time for pay-  
ment in full  
of purchase-  
money.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property :

Provided that in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off which he may be entitled under rule 72.

Procedure in  
default of  
payment.

86. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court think fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Notification  
on re-sale.

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Bid of co-  
sharer to  
have prefer-  
ence.

88. Where the property sold is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Application  
to set aside  
sale on depo-  
sit.

89. (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

(The First Schedule. Order XXI.—Execution of Decrees and Orders.)

- (a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and
- (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90. (1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it :

Application to set aside sale on ground of irregularity or fraud.

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

Sale when to become absolute or be set aside.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money,

Return of purchase-

*(The First Schedule. Order XXI.—Execution of Decrees and Orders.)*

money in certain cases.

with or without interest as the Court may direct, against any person to whom it has been paid.

Certificate to purchaser.

94. Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

Delivery of property in occupancy of judgment-debtor.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of tenant.

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

*Resistance to delivery of possession to decree-holder or purchaser.*

Resistance or obstruction to possession of immoveable property.

97. (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Resistance or obstruction by judgment-debtor.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

(The First Schedule. Order XXI.—Execution of Decrees and Orders.)

Order XXII.—Death, Marriage and Insolvency of Parties.)

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

Resistance or obstruction by *bonâ fide* claimant.

100. (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

Dispossession by decree-holder or purchaser.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

*Bonâ fide* claimant to be restored to possession.

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Rules not applicable to transferee *lité pendente*.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property ; but, subject to the result of such suit (if any), the order shall be conclusive.

Orders conclusive subject to regular suit.

## ORDER XXII.

### *Death, Marriage and Insolvency of Parties.*

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

No abatement by party's death if right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure where one of several plaintiffs or defendants dies and right to sue survives.

(The First Schedule. Order XXII.—Death, Marriage and Insolvency of Parties.)

Procedure in case of death of one of several plaintiffs or of sole plaintiff.

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff

Procedure in case of death of one of several defendants or of sole defendant.

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

Determination of question as to legal representative.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

No abatement by reason of death after hearing.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Suit not abated by marriage of female party.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

(The First Schedule. Order XXII.—*Death, Marriage and Insolvency of Parties.*)

8. (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for costs thereof within such time as the Court may direct.

When plaintiff's insolvency bars suit.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Procedure where assignee fails to continue suit or give security.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same causes of action.

Effect of abatement or dismissal.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

XV of 1877. (3) The provisions of section 5 of the <sup>1</sup> Indian Limitation Act, 1877, shall apply to applications under sub-rule (2).

10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

Procedure in case of assignment before final order in suit.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application of order to appeals.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

Application of order to proceedings.

<sup>1</sup> See now the Indian Limitation Act, 1908 (IX of 1908), ss. 4 and 5, *infra*.



(The First Schedule. Order XXIII.—*Withdrawal and Adjustment of Suits.*  
Order XXIV — *Payment into Court.*)

## ORDER XXIII.

*Withdrawal and Adjustment of Suits.*

Withdrawal  
of suit or  
abandonment  
of part of  
claim.

1. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation  
law not  
affected by  
fresh suit.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Compromise  
of suit.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

Proceedings  
in execution  
of decrees not  
affected.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

## ORDER XXIV.

*Payment into Court.*

Deposit by  
defendant of  
amount in  
satisfaction  
of claim.

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

(The First Schedule. Order XXIV.—Payment into Court. Order XXV.—  
Security for Costs.)

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application. Notice of deposit.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof. Interest on deposit not allowed to plaintiff after notice.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim. Procedure where plaintiff accepts deposit as satisfaction in part.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation. Procedure where he accepts it as satisfaction in full.

#### *Illustrations.*

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

### ORDER XXV.

#### *Security for Costs.*

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India other than the property in suit, the Court may, either of When security for costs may be required from plaintiff.

(The First Schedule. Order XXV.—Security for Costs. Order XXVI.—Commissions.)

its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Residence out  
of British  
India.

(2) Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of sub-rule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India.

Effect of fail-  
ure to furnish  
security.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

## ORDER XXVI.

### COMMISSIONS.

#### *Commissions to examine witnesses.*

Cases in  
which Court  
may issue  
commission  
to examine  
witness.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

Order for  
commission.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Where wit-  
ness resides  
within  
Court's juris-  
diction.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court think fit to execute it.

*(The First Schedule. Order XXVI.—Commissions.)*

4. (1) Any Court may in any suit issue a commission for the examination of—

Persons for whose examination commission may issue.

- (a) any person resident beyond the local limits of its jurisdiction ;
- (b) any person who is about to leave such limits before the date on which he is required to be examined in Court ; and
- (c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

Commission or request to examine witness not within British India.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

Court to examine witness pursuant to commission.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order ; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

Return of commission with depositions of witnesses.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

When depositions may be read in evidence.

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

*(The First Schedule. Order XXVI.—Commissions.)*

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a) and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

*Commissions for local investigations.*

Commissions  
to make local  
investiga-  
tions.

9 In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the Local Government has made rules as to the person to whom such commission shall be issued, the Court shall be bound by such rules.

Procedure of  
Commissioner

10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

Report and  
depositions  
to be evidence  
in suit.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record ; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

Commissioner  
may be exam-  
ined in per-  
son.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

*Commissions to examine accounts.*

Commission  
to examine  
or adjust  
accounts.

11. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Court to give  
Commissioner  
necessary  
instructions.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the

*(The First Schedule. Order XXVI.—Commissions.)*

proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Proceedings and report to be evidence. Court may direct further inquiry.

*Commissions to make partitions.*

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Commission to make partition of immoveable property.

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

Procedure of Commissioner.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

*General provisions.*

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Expenses of Commission to be paid into Court.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

Powers of Commissioners.

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(*The First Schedule. Order XXVI.—Commissions. Order XXVII.—Suits by or against the Government, etc.*)

(b) call for and examine documents and other things relevant to the subject of inquiry ;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance and examination of witnesses before Commissioner.

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of British India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Parties to appear before Commissioner.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence

## ORDER XXVII.

*Suits by or against the Government or Public Officers in their official capacity.*

Suits by or against Government.

1. In any suit by or against the Secretary of State for India in Council, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Persons authorized to act for Government.

2. Persons being *ex-officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Plaints in suits by or against Government.

3. In suits by or against the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words "The Secretary of State for India in Council."

(*The First Schedule. Order XXVII—Suits by or against Government, etc.*

*Order XXVIII—Suits by or against Military Men.)*

4. The Government pleader in any Court, or such other person as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such Court.

Agent for Government to receive process.

5. The Court, in fixing the day for the Secretary of State for India in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government, and may extend the time at its discretion.

Fixing of day for appearance on behalf of Government.

6. The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

7. (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

Extension of time to enable public officer to make reference to Government.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

8. (1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

Procedure in suits against public officer.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties :

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

## ORDER XXVIII.

### *Suits by or against Military Men.*

1. (1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or soldiers who cannot obtain leave may authorize any



(*The First Schedule. Order XXVIII.—Suits by or against Military men.*  
*Order XXIX.—Suits by or against Corporations.*)

person to sue  
or defend for  
them.

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, detachment or dépôt to which the officer or soldier belongs.

Person so  
authorized  
may act per-  
sonally or ap-  
point pleader.

2. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Service on  
person so  
authorized, or  
on his  
pleader, to  
be good  
service.

3. Processes served upon any person authorized by an officer or a soldier under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

## ORDER XXIX.

### *Suits by or against Corporations.*

Subscription  
and verifica-  
tion of plead-  
ing.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on  
corporation.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office, then at the place where the corporation carries on business.

Power to  
require  
personal  
attendance  
of officer of  
corporation.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

(The First Schedule. Order XXX.—Suits by or against Firms and Persons carrying on business in names other than their own.)

## ORDER XXX.

*Suits by or against Firms and Persons carrying on business in names other than their own.*

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct. Suing of partners in name of firm.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted. Disclosures of partners names.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint :

Provided that all the proceedings shall nevertheless continue in the name of the firm.

3. Where persons are sued as partners in the name of their firm, the Service. summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within British India upon any person having, at the time of service, the control or management of the partnership business there,

(The First Schedule. Order XXX.—Suits by or against Firms and Persons carrying on business in names other than their own.)

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without British India :

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within British India whom it is sought to make liable.

Right of suit  
on death of  
partner.

4. (1) Notwithstanding anything contained in section 45 of the <sup>1</sup> Indian Contract Act, 1872, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Notice in  
what capa-  
city served.

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Appearance  
of partners.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No appear-  
ance except  
by partners.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance  
under protest.

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

Suits between  
co-partners.

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the

<sup>1</sup> General Acts, Vol. II.

(*The First Schedule. Order XXXI.—Suits by or against Trustees, Executors and Administrators. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.*)

Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all rules under this Order shall apply.

Suit against person carrying on business in name other than his own.

### ORDER XXXI.

*Suits by or against Trustees, Executors and Administrators.*

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

Representation of beneficiaries in suits concerning property vested in trustees, etc.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them :

Joinder of trustees, executors and administrators.

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside British India, need not be made parties.

3. Unless the Court directs otherwise the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

Husband of married executrix not to join.

### ORDER XXXII.

*Suits by or against Minors and Persons of Unsound Mind.*

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Minor to sue by next friend.

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

Where suit is instituted without next friend, plaint to be taken off the file.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

*(The First Schedule. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)*

Guardian for the suit to be appointed by Court for minor defendant.

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

Who may act as next friend or be appointed guardian for the suit.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit :

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

(*The First Schedule. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.*)

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

Representa-  
tion of minor  
by next  
friend or  
guardian for  
the suit.

(2) Every order may in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

Receipt by  
next friend  
or guardian  
for the suit of  
property  
under decree  
for minor.

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

Agreement or  
compromise  
by next  
friend or  
guardian for  
the suit.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

Retirement of  
next friend.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during

Removal of  
next friend.

*(The First Schedule. Order XXXII.—Suits by or against Minors and Persons of Unsound Mind.)*

the pendency of the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Stay of proceedings on removal, etc., of next friend.

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Retirement, removal or death of guardian for the suit.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Course to be followed by minor plaintiff or applicant on attaining majority.

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus :—

“ A.B., late a minor, by C.D., his next friend, but now having attained majority.”

(The First Schedule. Order XXXII.—Suits by or against Minors or Persons of Unsound Mind.)

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte*: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Where minor co-plaintiff attaining majority desires to repudiate suit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

Unreasonable or improper suit.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

Application of rules to persons of unsound mind.

16 Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Governor General in Council or a Local Government in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Saving for Princes and Chiefs.



(The First Schedule. Order XXXIII.—Suits by Paupers.)

### ORDER XXXIII.

#### *Suits by Paupers.*

Suits may be instituted in form *pau-peris*.

1. Subject to the following provisions, any suit may be instituted by a pauper.

*Explanation.*—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

Contents of application.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits : a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto ; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Presentation of application.

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Examination of applicant.

4. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.  
Rejection of application.

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. The Court shall reject an application for permission to sue as a pauper—

- (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or
- (b) where the applicant is not a pauper, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (d) where his allegations do not show a cause of action, or

*(The First Schedule. Order XXXIII.—Suits by Paupers.)*

- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Notice of day for receiving evidence of applicant's pauperism.

7. (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

Procedure at hearing.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

Procedure if application admitted.

9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

Dispaupering.

- (a) if he is guilty of vexatious or improper conduct in the course of the suit ;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper ; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper ; such amount shall be recoverable

Costs where pauper succeeds.

(*The First Schedule. Order XXXIII.—Suits by Paupers. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.*)

by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

Procedure  
where pauper  
fails

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

Government  
may apply  
for payment  
of court-fee.

12. The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10 or rule 11.

Government-  
to be deemed  
a party.

13. All matters arising between the Government and any party to the suit under rule 10, rule 11 or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

Copy of de-  
cree to be sent  
to Collector.

14. Where an order is made under rule 10, rule 11 or rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Collector.

Refusal to  
allow appli-  
cant to sue as  
pauper to bar  
subsequent  
application of  
like nature

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

Costs.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

#### ORDER XXXIV.

##### *Suits relating to Mortgages of Immoveable Property.*

Parties to  
suits for fore-  
closure, sale  
and redemp-  
tion.

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)

*Explanation.*—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit ; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

2. In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a decree—

Preliminary decree in foreclosure-suit.

(a) ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or

(b) declaring the amount so due at the date of such decree, and directing—

(c) that if the defendant pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, but

(d) that, if such payment is not made on or before the day to be fixed by the Court, the defendant shall be debarred from all right to redeem the property.

3. (1) Where, on or before the day fixed, the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

Final decree in foreclosure-suit.

(a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required—

(b) ordering him to retransfer the mortgaged property as directed in the said decree, and, also, if necessary :—

(c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the defendant and all persons claiming through or under him be debarred from all right to redeem

*(The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.)*

the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property :

Power to enlarge time.

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for such payment.

Discharge of debt.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

Preliminary decree in suit for sale.

4. (1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a), (b) and (c) of rule 2 and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

Power to decree sale in foreclosure-suit.

(2) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff or of any person interested either in the mortgage-money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

Final decree in suit for sale.

5. (1) Where on or before the day fixed the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

(a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and if so required,—

(b) ordering him to retransfer the mortgaged property as directed in the said decree, and also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in rule 4.

(The First Schedule. Order XXXIV.—Suit relating to Mortgages of Immoveable Property.)

6. Where the net proceeds of any such sale are found to be insufficient to pay the amount due to the plaintiff, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such amount.

Recovery of balance due on mortgage.

7. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree—

Preliminary decree in redemption-suit.

(a) ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or

(i) declaring the amount so due at the date of such decree, and directing—

(c) that if the plaintiff pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff in possession of the property, but

(d) that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold.

8. (1) Where, on or before the day fixed, the plaintiff pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

Final decree in redemption-suit.

(a) ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,—

(b) ordering him to retransfer the mortgaged property as directed in the said decree, and also, if necessary,—

(c) ordering him to put the plaintiff in possession of the property.

(*The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property.*)

(2) Where such payment is not so made, and the mortgage is not simple or usufructuary, the Court shall, on application made in that behalf by the defendant, pass a decree that the plaintiff and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary ordering the plaintiff to put the defendant in possession of the property.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

(4) Where such payment is not so made, and the mortgage is not by conditional sale, the Court shall, on application made in that behalf by the defendant, pass a decree that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance (if any) be paid to the plaintiff or other persons entitled to receive the same :

Power to  
enlarge time.

Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for payment.

Decree where  
nothing is  
found due or  
where mort-  
gagee has been  
overpaid.

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to re-transfer the property and to pay to the plaintiff the amount which may be found due to him : and the plaintiff shall, if necessary, be put in possession of the mortgaged property

Costs of mort-  
gagee subse-  
quent to de-  
cree.

10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure or sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment.

Right of  
mesne-mort-  
gagee to  
redeem and  
foreclose.

11. Where property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

Sale of pro-  
perty subject  
to prior  
mortgage.

12. Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

(*The First Schedule. Order XXXIV.—Suits relating to Mortgages of Immoveable Property. Order XXXV—Interpleader.*)

13. (1) Such proceeds shall be brought into Court and applied as follows :— Application of proceeds.

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale ;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith ;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made ;

fourthly, in payment of the principal money due on account of that mortgage ; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

IV of 1882. (2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the<sup>1</sup> Transfer of Property Act, 1882.

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2. Suit for sale necessary for bringing mortgaged property to sale.

IV of 1882. (2) Nothing in sub-rule (1) shall apply to any territories to which the<sup>1</sup> Transfer of Property Act, 1882, has not been extended.

15. All the provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge within the meaning of section 100 of the<sup>1</sup> Transfer of Property Act, 1882. Charges.

IV of 1882.

### ORDER XXXV.

#### *Interpleader.*

1. In every suit of interpleader the plaint shall, in addition to the other statements necessary for plaints, state— Plaint in interpleader-suits.

(a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs ;

(b) the claims made by the defendants severally ; and

<sup>1</sup> Genl. Acts, Vol. III.



*(The First Schedule. Order XXXV.—Interpleader.)*

(c) that there is no collusion between the plaintiff and any of the defendants.

Payment of  
thing claimed  
into Court.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

Procedure  
where defen-  
dant is suing  
plaintiff.

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him ; and his costs in the suit so stayed may be provided for in such suit ; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Procedure at  
first hearing.

4. (1) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit ; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and  
tenants may  
not institute  
interpleader-  
suits.

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

*Illustrations.*

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Charge for  
plaintiff's  
costs.

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

(The First Schedule. Order XXXVI.—*Special Case.*)

## ORDER XXXVI.

### *Special Case.*

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

Power to state case for Court's opinion.

- (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them ; or
- (b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them ; or
- (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Where value of subject-matter must be stated.

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

Agreement to be filed and registered as suit.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Parties to be subject to Court's jurisdiction.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

Hearing and disposal of case.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

- (a) that the agreement was duly executed by them,

(The First Schedule. Order XXXVII.—Summary Procedure on Negotiable Instruments.)

(b) that they have a *bonâ fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII.

*Summary Procedure on Negotiable Instruments.*

Application  
of order.

1. This Order shall apply only to—

(a) the High Courts of Judicature at Fort William, Madras and Bombay;

(b) the Chief Court of Lower Burma;

(c) the Court of the Judicial Commissioner of Sind; and

(d)<sup>1</sup> any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied. XIV of 1882.

Institution of  
summary  
suits upon  
bills of  
exchange,  
etc.

2. (1) All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

Defendant  
showing de-  
fence on  
merits to have  
leave to  
appear.

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

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<sup>1</sup> See notifications under s. 538 of Act XIV of 1882 in the various Lists of Local Rules and Orders.

(The First Schedule. Order XXXVIII.—*Arrest and Attachment before Judgment.*)

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to set aside decree.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Power to order bill, etc., to be deposited with officer of Court.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or, otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

Procedure in suits.

### ORDER XXXVIII.

#### *Arrest and Attachment before Judgment*

#### *Arrest before Judgment.*

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

Where defendant may be called upon to furnish security for appearance.

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before

*(The First Schedule. Order XXXVIII.—Arrest and Attachment before Judgment.)*

the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim ; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

**Security.**

2. (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

**Procedure on application by surety to be discharged.**

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

**Procedure where defendant fails to furnish security or find fresh security.**

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied :

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

(The First Schedule. Order XXXVIII.—Arrest and Attachment before Judgment.)

*Attachment before Judgment.*

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Where defendant may be called upon to furnish security for production of property.

Attachment where cause not shown or security not furnished.

Mode of making attachment.

Investigation of claim to property attached before judgment.

Removal of attachment when security furnished or suit dismissed.

Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.

(*The First Schedule. Order XXXVIII.—Arrest and Attachment before Judgment. Order XXXIX.—Temporary Injunctions and Interlocutory Orders.*)

Property attached before judgment not to be re-attached in execution of decree.  
Agricultural produce not attachable before judgment.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

12. Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

### ORDER XXXIX.

#### *Temporary Injunctions and Interlocutory Orders.*

##### *Temporary Injunctions.*

Cases in which temporary injunction may be granted.

1. Where in any suit it is proved by affidavit or otherwise—

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

Injunction to restrain repetition or continuance of breach.

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(The First Schedule. Order XXXIX.—Temporary Injunctions and Interlocutory Orders.)

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

(3) The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Before granting injunction Court to direct notice to opposite party.

4. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Order for injunction may be discharged, varied or set aside.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Injunction to corporation binding on its officers.

*Interlocutory Orders.*

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Power to order interim sale.

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

Detention, preservation, inspection, etc., of subject-matter of suit.

- (a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein ;
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit ; and
- (c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.



(*The First Schedule. Order XXXIX.—Temporary Injunctions and Interlocutory Orders. Order XL.—Appointment of Receivers.*)

Application  
for such  
orders to be  
after notice

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

When party  
may be put  
in immediate  
possession of  
land the sub-  
ject-matter of  
suit.

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure ;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Deposits of  
money, etc.,  
in Court.

10. Where the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

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ORDER XL.

*Appointment of Receivers.*

Appointment  
of receivers.

1. (1) Where it appears to the Court to be just and convenient, the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree ;
- (b) remove any person from the possession or custody of the property ;
- (c) commit the same to the possession, custody or management of the receiver ; and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection, of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(The First Schedule. Order XL.—Appointment of Receivers. Order  
XLI.—Appeals from Original Decrees.)

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove

2. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver. Remuneration.

3. Every receiver so appointed shall— Duties.

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property ;
- (b) submit his accounts at such periods and in such form as the Court directs ;
- (c) pay the amount due from him as the Court directs ; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

4. Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or Enforcement of receiver's duties.
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or releamed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property. When Collector may be appointed receiver.

## ORDER XLI.

### *Appeals from Original Decrees.*

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded. Form of appeal.  
  
What to accompany memorandum.

*(The First Schedule. Order XLI.—Appeals from Original Decrees.)*

Contents of memorandum.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative ; and such grounds shall be numbered consecutively.

Grounds which may be taken in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal ; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule :

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memorandum.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants as the case may be.

*Stay of proceedings and of execution.*

Stay by Appellate Court.

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree ; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made ;

(The First Schedule. Order XLI.—Appeals from Original Decrees.)

(b) that the application has been made without unreasonable delay ;  
and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

Security in case of order for execution of decree appealed from.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. No such security as is mentioned in rules 5 and 6 shall be required from the Secretary of State for India in Council or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

No security to be required from the Government or a public officer in certain cases.

8. The powers conferred by rules 5 and 6 shall be exerciseable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Exercise of powers in appeal from order made in execution of decree.

#### *Procedure on admission of appeal.*

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation and shall register the appeal in a book to be kept for the purpose.

Registry of memorandum of appeal.

(2) Such book shall be called the Register of Appeals.

10. (1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Register of Appeal. Appellate Court may require appellant to furnish security for costs.

*(The First Schedule. Order XLI.—Appeals from Original Decrees.)*

Where appellant resides out of British India.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

Power to dismiss appeal without sending notice to Lower Court.

11. (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

Day for hearing appeal.

12. (1) Unless the Appellate Court dismisses the appeal under rule 11 it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Appellate Court to give notice to Court whose decree appealed from. Transmission of papers to Appellate Court.

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree appealed from.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made : and copies of such papers shall be made at the expense of, and given to, the applicant.

Publication and service of notice of day for hearing appeal.

14. (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer ; and

*(The First Schedule. Order XLI.—Appeals from Original Decrees.)*

all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

Appellate Court may itself cause notice to be served.

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Contents of notice.

*Procedure on hearing.*

16. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

Right to begin.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

17. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Dismissal of appeal for appellant's default.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Hearing appeal *ex parte*

18. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed :

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19. Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17, or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal ; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Re-admission of appeal dismissed for default.

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court and direct that such person be made a respondent.

Power to adjourn hearing and direct persons appearing interested to be made respondents.

## (The First Schedule. Order XLI.—Appeals from Original Decrees.)

Re-hearing  
on application  
of respon-  
dent against  
whom *ex*  
*parte* decree  
made.

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal ; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

Upon hearing  
respondent  
may object to  
decree as if he  
had preferred  
separate ap-  
peal.

22. (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Form of ob-  
jection and  
provisions ap-  
plicable there-  
to.

(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

Remand of  
case by Ap-  
pellate Court.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit ; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

Where evi-  
dence on re-  
cord sufficient,  
Appellate  
Court may

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding

*(The First Schedule. Order XLI.—Appeals from Original Decrees.)*

that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

determine case finally.

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required ;

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

26. (1) Such evidence and findings shall form part of the record in the suit ; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding

Findings and evidence to be put on record. Objections to finding. Determination of appeal.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

27 (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

Production of additional evidence in Appellate Court.

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Mode of taking additional evidence.

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Points to be defined and recorded.

*Judgment in appeal.*

30. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court

Judgment when and



(*The First Schedule. Order XLI.—Appeals from Original Decrees.*)

where pronounced,

from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

Contents, date and signature of judgment.

31. The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination ;
- (b) the decision thereon ;
- (c) the reasons for the decision ; and,
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled ;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

What judgment may direct.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

Power of Court of Appeal.

33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

#### *Illustration.*

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

Dissent to be recorded.

34. Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

#### *Decree in appeal.*

Date and contents of decree.

35. (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and clear specification of the relief granted or other adjudication made.

(The First Schedule. Order XLI.—*Appeals from Original Decrees.* Order XLII.—*Appeals from Appellate Decrees.* Order XLIII.—*Appeals from Orders.*)

(3) The decree shall also state the amount of costs incurred in the appeal and by whom, or out of what property, and in what proportion such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it :

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Judge dissenting from judgment need not sign decree.

36. Certified copies of the judgment and of the decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Copies of judgment and decree to be furnished to parties.

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed from.

#### ORDER XLII.

##### *Appeals from Appellate Decrees.*

1. The rules of Order XLI shall apply, so far as may be, to appeals from Appellate decrees.

Procedure.

#### ORDER XLIII.

##### *Appeals from Orders.*

1. An appeal shall lie from the following orders under the provisions of section 104, namely :—

Appeals from orders.

- (a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court ;
- (b) an order under rule 10 of Order VIII pronouncing judgment against a party ;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte* ;

*(The First Schedule. Order XLIII.—Appeals from Orders.)*

- (e) an order under rule 4 of Order X pronouncing judgment against a party ;
- (f) an order under rule 21 of Order XI ;
- (g) an order under rule 10 of Order XVI for the attachment of property ;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party ;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement ;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale ;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit ;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave :
- (m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction ;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;
- (o) an order under rule 3 or rule 8 of Order XXXIV refusing to extend the time for the payment of mortgage-money ;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV ;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII ;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX ;
- (s) an order under rule 1 or rule 4 of Order XL ;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal ;
- (u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court ;
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV ;
- (w) an order under rule 4 of Order XLVII granting an application for review.

**Procedure.**

**2.** The rules of Order XLI shall apply, so far as may be, to appeals from orders.

(The First Schedule. Order XLIV.—*Pauper Appeals.* Order XLV.—*Appeals to the King in Council.*)

## ORDER XLIV.

*Pauper Appeals.*

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable :

Who may appeal as pauper.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Procedure on application for admission of appeal.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred :

Enquiry into pauperism.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

## ORDER XLV.

*Appeals to the King in Council.*

1. In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

"Decree" defined.

2. Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of.

Application to Court whose decree complained of.

3. (1) Every petition shall state the grounds of appeal and pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council.

Certificate as to value or fitness.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

4. For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated : but suits decided by separate judgments shall not be con-

Consolidation of suits.

(*The First Schedule. Order XLV.—Appeals to the King in Council.*)

solidated, notwithstanding that they involve substantially the same questions for determination

Remission of dispute to Court of first instance.

5. In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject-matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last-mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

Effect of refusal of certificate.

6. Where such certificate is refused, the petition shall be dismissed.

Security and deposit required on grant of certificate.

7. (1) Where the certificate is granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the date of the grant of the certificate, whichever is the later date,—

- (a) furnish security for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit, except—
  - (1) formal documents directed to be excluded by any order of His Majesty in Council in force for the time being ;
  - (2) papers which the parties agree to exclude ;
  - (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included ; and
  - (4) such other documents as the High Court may direct to be excluded.

(2) Where the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also within the time mentioned in sub-rule (1) deposit the amount required to defray the expense of printing such copy.

Admission of appeal and procedure thereon.

8. Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and
- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

(*The First Schedule. Order XLV.—Appeals to the King in Council.*)

9. At any time before the admission of the appeal the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon. Revocation of acceptance of security.

10. Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to His Majesty in Council, such security appears inadequate, Power to order further security or payment.

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

11. Where the appellant fails to comply with such order, the proceeding shall be stayed, Effect of failure to comply with order.

and the appeal shall not proceed without an order in this behalf of His Majesty in Council,

and in the meantime execution of the decree appealed from shall not be stayed.

12. When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council, the appellant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7. Refund of balance deposit.

13. (1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs. Powers of Court pending appeal.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

(a) impound any moveable property in dispute or any part thereof, or

(b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which His Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-

*(The First Schedule. Order XLV.—Appeals to the King in Council.)*

matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

Increase of  
security found  
inadequate.

14. (1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,—

- (a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security ;
- (b) if the original security was furnished by the respondent, the Court, shall, so far as may be practicable, stay the further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure to  
enforce orders  
of King in  
Council.

15. (1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred.

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same ; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

Appeal from  
order relating  
to execution.

16. The orders made by the Court which executes the order of His Majesty in Council, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

(The First Schedule. Order XLVI.—Reference.)

## ORDER XLVI.

*Reference.*

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Reference of question to High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

Court may pass decree contingent upon decision of High Court.

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Judgment of High Court to be transmitted, and case disposed of accordingly.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

Costs of reference to High Court.

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to alter, etc., decree of Court making reference.

6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

Power to refer to High Court questions as to jurisdiction in small causes.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.



*(The First Schedule. Order XLVII.—Review.)*

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

## ORDER XLVII.

*Review.*

Application for review of judgment.

1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom applications for review may be made.

2. An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree

*(The First Schedule. Order XLVII.—Review.)*

shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review. Form of applications for review.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application. Application where rejected.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same : Application where granted.

Provided that—

- (a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for : and
- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same. Application for review in Court consisting of two or more Judges.

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected. Application where rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was— Order of rejection not appealable. Objections to order granting application.

- (a) in contravention of the provisions of rule 2.
- (b) in contravention of the provisions of rule 4, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

(*The First Schedule. Order XLVII.—Review. Order XLVIII.—Miscellaneous. Order XLIX.—Chartered High Courts.*)

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

Registry of application granted, and order for re-hearing.

Bar of certain applications.

8. When an application for review is granted, a note thereof shall be made in the register, and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

#### ORDER XLVIII.

##### *Miscellaneous.*

Process to be served at expense of party issuing.

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

Orders and notices how served.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Use of forms in appendices.

3. The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

#### ORDER XLIX.

##### *Chartered High Courts.*

Who may serve processes of High Court.

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notice

(*The First Schedule. Order XLIX.—Chartered High Courts. Order L.—Provincial Small Cause Courts.*)

to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

2. Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court. Saving in respect of Chartered High Courts.

3. The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely :— Application of rules.

- (1) rule 10 and rule 11, clauses (b) and (c), of Order VII ;
- (2) rule 3 of Order X ;
- (3) rule 2 of Order XVI ;
- (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII ;
- (5) rules 1 to 8 of Order XX ; and
- (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum) ;

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

## ORDER L.

### *Provincial Small Cause Courts.*

IX of 1887. 1. The provisions hereinafter specified shall not extend to Courts constituted under the<sup>1</sup> Provincial Small Causes Courts Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say— Provincial Small Cause Courts.

- (a) so much of this schedule as relates to—
  - (i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits ;
  - (ii) the execution of decrees against immoveable property or the interest of a partner in partnership property ;
  - (iii) the settlement of issues ; and
- (b) the following rules and orders,—
  - Order II, rule 1 (frame of suit) :
  - Order X, rule 3 (record of examination of parties) ;

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<sup>1</sup> Genl. Acts, Vol. IV.

(*The First Schedule. Order LI.—Presidency Small Cause Courts.*)

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment ;

Order XVIII, rules 5 to 12 (evidence) ;

Orders XLI to XLV (appeals) ;

Order XLVII, rules 2, 3, 5, 6, 7 (review) ;

Order LI.

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### ORDER LI.

*Presidency Small Cause Courts.*

Presidency  
Small Cause  
Courts.

1. Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the<sup>1</sup> Presidency Small Cause Courts Act, 1882, this schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay. XV of 1882.

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<sup>1</sup> Gen. Acts, Vol. III.

(The First Schedule. Appendix A.—Pleadings.)

## APPENDIX A.

### PLEADINGS.

#### (1) TITLES OF SUITS

IN THE COURT OF

A. B. (*add description and residence*) . . . Plaintiff,

*against*

C. D. (*add description and residence*) . . . Defendant.

#### (2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

The Secretary of State for India in Council.

The Advocate General of

The Collector of

The State of

The A. B. Company, Limited, having its registered office at

A. B., a public officer of the C. D. Company

A. B. (*add description and residence*), on behalf of himself and all other creditors of C. D., late of (*add description and residence*).

A. B. (*add description and residence*), on behalf of himself and all other holders of debentures issued by the Company Limited.

The Official Receiver.

A. B., a minor (*add description and residence*), by C. D. or [or by the Court of Wards], his next friend.

A. B. (*add description and residence*), a person of unsound mind [or of weak mind], by C. D., his next friend.

A. B., a firm carrying on business in partnership at

*(The First Schedule. Appendix A.—Pleadings.)*

A. B. (*add description and residence*), by his constituted attorney C. D. (*add description and residence*).

---

A. B. (*add description and residence*), Shebait of Thakur

---

A. B. (*add description and residence*), executor of C. D., deceased.

---

A. B. (*add description and residence*), heir of C. D., deceased.

---

(3) PLAINTS.

## No. 1.

## MONEY LENT.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the            day of            19    , he lent the defendant    rupees repayable on the            day of            .

2. The defendant has not paid the same, except    rupees paid on the            day of            19    .

[*If the plaintiff claims exemption from any law of limitation, say :—*]

3. The plaintiff was a minor [*or insane*] from the            day of            till the            day of            .

4. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]

5. The value of the subject-matter of the suit for the purpose of jurisdiction is            rupees and for the purpose of court-fees is rupees.

6. The plaintiff claims            rupees, with interest at            per cent. from the            day of            19    .

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No. 2.

## MONEY OVERPAID.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the            day of            19    , the plaintiff agreed to buy and the defendant agreed to sell            bars of silver at annas per tola of fine silver.

*(The First Schedule. Appendix A.—Pleadings.)*

2. The plaintiff procured the said bars to be assayed by *E. F.*, who was paid by the defendant for such assay, and *E. F.* declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant rupees.

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 3.

## GOODS SOLD AT A FIXED PRICE AND DELIVERED.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:

1. On the                      day of                      19   , *E. F.* sold and delivered to the defendant [one hundred barrels of flour, *or* the goods mentioned in the schedule hereto annexed, *or* sundry goods].

2. The defendant promised to pay                      rupees for the said goods on delivery [*or* on the                      day of                     , *some day before the plaint was filed*].

3. He has not paid the same.

4. *E. F.* died on the                      day of                      19   . By his last will he appointed his brother, the plaintiff, his executor.

*[As in paras. 4 and 5 of Form No. 1.]*

7. The plaintiff as executor of *E. F.* claims [*Relief claimed*].

## No. 4.

## GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows:—

1. On the                      day of                      19   , plaintiff sold and delivered to the defendant [*sundry articles of house-furniture*], but no express agreement was made as to the price.

2. The goods were reasonably worth                      rupees.

3. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*



## (The First Schedule. Appendix A.—Pleadings.)

No. 5.

## GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , *E. F.* agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that *E. F.* should pay for the goods on delivery                      rupees.

2. The plaintiff made the goods, and on the                      day of 19     offered to deliver them to *E. F.*, and has ever since been ready and willing so to do.

3. *E. F.* has not accepted the goods or paid for them.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 6.

## DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , the plaintiff put up at auction sundry [*goods*], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased [*one crate of crockery*] at the auction at the price of                      rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, nor afterwards.

5. On the                      day of                      19     , the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction for rupees.

6. The expenses attendant upon such re-sale amounted to rupees.

7. The defendant has not paid the deficiency thus arising, amounting to rupees.

[*As in paras. 4 and 5 of Form No. 1 and Relief claimed.*]

(The First Schedule. Appendix A.—Pleadings.)

No. 7.

SERVICES AT A REASONABLE RATE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. Between the            day of            19            , and the            day of            19            , at            , plaintiff [*executed sundry drawings, designs and diagrams*] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth            rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 8

SERVICES AND MATERIALS AT A REASONABLE COST.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the            day of            19            , at            , the plaintiff built a house [known as No.            , in            ], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 9.

USE AND OCCUPATION.

(Title.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows :—

1. That the defendant occupied the [house No.            , Street], by permission of the said X. Y., from the            day of            , 19            , until the            day of            19            , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth            rupees.

## (The First Schedule. Appendix A.—Pleadings.)

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff as executor of X. Y. claims [*Relief claimed.*]

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No. 10.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , the plaintiff and defendant having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.

2. On the                      day of                      19     , the arbitrators awarded that the defendant should [pay the plaintiff                      rupees].

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 11.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , at                      , in the State [or Kingdom] of                      , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff                      rupees, with interest from the said date.

2. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

---

No. 12.

AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19     , E. F. hired from the plaintiff for the term of                      years, the [house No.                      ,                      Street], at the annual rent of                      rupees, payable [monthly].

*(The First Schedule. Appendix A.—Pleadings.)*

2. The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.

3. The rent for the month of 19 , amounting to rupees has not been paid.

*[If, by the terms of the agreement, notice is required to be given to the surety, add.—]*

4. On the day of 19 , the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 13.

## BREACH OF AGREEMENT TO PURCHASE LAND.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

*[Or, on the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for rupees.]*

2. On the day of 19 , the plaintiff, being then the absolute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [*or, was ready and willing, and is still ready and willing and offered, to transfer the same to the defendant by a sufficient instrument*] on the payment by the defendant of the sum agreed upon.

2. The defendant has not paid the money.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

## No. 14.

## NOT DELIVERING GOODS SOLD.

*(Title.)*

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of

*(The First Schedule. Appendix A.—Pleadings.)*

flour] to the plaintiff on the            day of            19    , and that the plaintiff should pay therefor            rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 15.

WRONGFUL DISMISSAL.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the            day of            19    , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman *or as the case may be*], and that the defendant should employ the plaintiff as such for the term of [one year] and pay him for his services            rupees [monthly].

2. On the            day of            19    , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the            day of            19    , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 16.

BREACH OF CONTRACT TO SERVE.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. On the            day of            19    , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] salary of            rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the            day of            19    , offered so to do].

(The First Schedule. Appendix A.—Pleadings.)

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the                      day of                      19   , he refused to serve the plaintiff as aforesaid.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

### No. 17.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19   , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.  
[Or state the tenor of the contract.]

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner.]

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

### No. 18.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19   , the plaintiff took E. F. into his employment as clerk.

2. In consideration thereof, on the                      day of                      19   , the defendant agreed with the plaintiff that if E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding                      rupees.

[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of                      rupees, subject to the condition that if E. F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all moneys, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

*(The First Schedule. Appendix A.—Pleadings.)*

[Or, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the            day of            19    and the            day of  
19    *E. F.* received money and other property, amounting to the  
value of            rupees, for the use of the plaintiff, for which sum he has  
not accounted to him, and the same still remains due and unpaid.

*[As in paras. 4 and 5 of Form No 1, and Relief claimed.]*

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No. 19

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19   , the defendant, by a registered  
instrument, let to the plaintiff [the house No.           ,            Street]  
for the term of            years, contracting with the plaintiff, that he, the  
plaintiff, and his legal representatives should quietly enjoy possession thereof  
for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle  
the plaintiff to maintain this suit.

3. On the            day of            19    during the said term, *E. F.*  
who was the lawful owner of the said house, lawfully evicted the plaintiff  
therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of  
a tailor at the said place, was compelled to expend            rupees in moving,  
and lost the custom of *G. H.* and *I. J.* by such removal.]

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

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No. 20.

ON AN AGREEMENT OF INDEMNITY.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19   , the plaintiff and defendant,  
being partners in trade under the style of *A. B.* and *C. D.*, dissolved the  
partnership, and mutually agreed that the defendant should take and keep all  
the partnership property, pay all debts of the firm and indemnify the plaintiff  
against all claims that might be made upon him on account of any indebted-  
ness of the firm.

*(The First Schedule. Appendix A—Pleadings.)*

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the            day of            19   , [a judgment was recovered against the plaintiff and defendant by *E. F.*, in the High Court of Judicature at           , upon a debt due from the firm to *E. F.*, and on the            day of            19   ,] the plaintiff paid            rupees [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

---

No. 21.

PROCURING PROPERTY BY FRAUD.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19   , the defendant for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth            rupees over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of            rupees.

3. The said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. The defendant has not paid for the goods. *Or, if the goods were not delivered.*] The plaintiff, in preparing and shipping the goods and procuring their restoration, expended            rupees.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

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No. 22.

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. On the            day of            19   , the defendant represented to the plaintiff that *E. F.* was solvent and in good credit, and worth            rupees over all his liabilities [*or that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit*].

2. The plaintiff was thereby induced to sell to *E. F.* [rice] of the value of            rupees [on            months credit].



(*The First Schedule. Appendix A.—Pleadings.*)

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or to deceive and injure the plaintiff*].

4. *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 23.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called                      and situate in                      and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the                      day of                      19                      , the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 24.

CARRYING ON A NOXIOUS MANUFACTURE.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called                      , situate in                      .

2. Ever since the                      day of                      19                      , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

(The First Schedule. Appendix A.—Pleadings.)

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

## No. 25.

## OBSTRUCTING A RIGHT OF WAY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of \_\_\_\_\_].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, *or* on foot] at all times of the year.

3. On the            day of            19    , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or* on foot, *or* in any manner] along the way [and has ever since wrongfully obstructed the same].

4. (State special damage, if any.)

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 26.

### OBSTRUCTING A HIGHWAY.

(Title)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from \_\_\_\_\_ to \_\_\_\_\_ so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench] and broke his arm.

*(The First Schedule. Appendix A.—Pleadings.)*

and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

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No. 27.

## DIVERTING A WATER-COURSE.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the day of 19 , the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

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No. 28.

## OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the day of 19 , the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

*[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]*

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No. 29.

## INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the defendants were common carriers of passengers by railway between and

*(The First Schedule. Appendix A.—Pleadings.)*

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3 While he was such passenger, at [or near the station of \_\_\_\_\_ or between the stations of \_\_\_\_\_ and \_\_\_\_\_], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[As in paras 4 and 5 of Form No 1, and Relief claimed.]

[Or thus:—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., as in para. 3.]

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No 30.

INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at \_\_\_\_\_  
The defendant is a merchant of \_\_\_\_\_.

2. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]



(The First Schedule. Appendix A.—Pleadings.)

6. The plaintiff claims—

- (1) delivery of the said goods, or    rupees, in the case deliv-  
very cannot be had ;
- (2)                      rupees compensation for the detention thereof.

### *The Schedule.*

## No. 33.

### AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the                      day of                      19                      , the defendant *C. D.*, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth                      rupees over all his liabilities].

2. The plaintiff was hereby induced to sell and deliver to C. D., [one hundred boxes of tea], the estimated value of which is                      rupees.

3. The said representations were false, and were then known by *C. D.* to be so [or at the time of making the said representations, *C. D.* was insolvent, and knew himself to be so].

4. *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [or who had notice of the falsity of the representation].

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims—

- (1) delivery of the said goods, or rupees, in case delivery cannot be had ;
- (2) rupees compensation for the detention thereof

No. 34.

## RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. On the                    day of                    19                    , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at                    , contained [ten bighas].

2. The plaintiff was thereby induced to purchase the same at the price of \_\_\_\_\_ rupees in the belief that the said representation was true, and

## (The First Schedule. Appendix A.—Pleadings.)

signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.

3. On the            day of            19   , the plaintiff paid the defendant            rupees as part of the purchase money.

4. That the said piece of ground contained in fact only [five bighas].

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims—

(1)            rupees, with interest from the            day of 19   ;

(2) that the said agreement be delivered up and cancelled.

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No. 35.

## AN INJUNCTION RESTRAINING WASTE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is the absolute owner of [*describe the property*].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed.*]

---

No. 36.

## INJUNCTION RESTRAINING NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all the times hereinafter mentioned was the absolute owner of the house No.           ,            Street, Calcutta.

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street           ].

3. On the            day of            19   , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and

(*The First Schedule. Appendix A.—Pleadings.*)

killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

[4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

---

No. 37.

PUBLIC NUISANCE

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. The defendant has wrongly heaped up earth and stones on a public road known as \_\_\_\_\_ Street at \_\_\_\_\_ so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Advocate General [*or of the Collector or other officer appointed in this behalf*] to the institution of this suit.

[*As in paras. 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road :

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

---

No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

[*As in Form No. 27.*]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.



## (The First Schedule. Appendix A.—Pleadings.)

## No. 39.

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR  
AN INJUNCTION.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grand-father which was executed by an eminent painter], and of which no duplicate exists [*or state any facts showing that the property is of a kind that cannot be replaced by money*].

2. On the                      day of                      19   , he deposited the same for safe-keeping with the defendant.

3. On the                      day of                      19   , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[*As in paras. 4 and 5 of Form No. 1*]

8. The plaintiff claims—

- (1) that the defendant be restrained by injunction from disposing of  
injuring or concealing the said [painting];
- (2) that he be compelled to deliver the same to the plaintiff.

---

 No. 40.

## INTERPLEADER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. Before the date of the claims hereinafter mentioned *G. H.* deposited with the plaintiff [*describe the property*] for [safe-keeping].

2. The defendant *C. D.* claims the same [under an alleged assignment thereof to him from *G. H.*].

3. The defendant *E. F.* also claims the same [under an order of *G. H.* transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

*(The First Schedule. Appendix A.—Pleadings)*

6. The suit is not brought by collusion with either of the defendants.

*[As in paras. 4 and 5 of Form No. 1.]*

9. The plaintiff claims—

- (1) that the defendants be restrained by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) that they be required to interplead together concerning their claims to the said property ;
- [(3) that some person be authorized to receive the said property pending such litigation ;]
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

---

No. 41.

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. *E. F.*, late of \_\_\_\_\_, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of

*[here insert nature of debt and security, if any].*

2. *E. F.* died on or about the \_\_\_\_\_ day of \_\_\_\_\_ By his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, he appointed *C. D.* his executor [*or* devised his estate in trust, etc., *or* died intestate, as the case may be].

3. The will was proved by *C. D.* [*or* letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable [and immoveable, *or* the proceeds of the immoveable] property of *E. F.*, and has not paid the plaintiff his debt.

*[As in paras. 4 and 5 of Form No. 1.]*

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of *E. F.*, deceased, and that the same may be administered under the decree of the Court.



*(The First Schedule. Appendix A.—Pleadings.)*

immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid

2. The will was proved by the defendant on the                      day of  
The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims—

- (1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken;
- (2) such further or other relief as the nature of the case may require.

---

No. 44.

## EXECUTION OF TRUSTS.

*(Title.)*

*A. B.*, the above-named plaintiff, states as follows :—

1. He is one of the trustees under an instrument of settlement bearing date on or about the                      day of                      made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or* an instrument of transfer of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and the other creditors of *E. F.*].

2. *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or* of the proceeds of] the moveable and immoveable property transferred by the said instrument.

3. *C. D.* claims to be entitled to a beneficial interest under the instrument.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or* of part of the said, immoveable property, *or* moveable, *or* the proceeds of the sale of, *or* of part of, the said moveable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of

## (The First Schedule. Appendix A.—Pleadings.)

*C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C. D.* and such other persons so interested as the Court may direct, or that *C. D.* may show good cause to the contrary.

[*N.B.*—Where the suit is by a beneficiary, the plaint may be modelled, *mutatis mutandis*, on the plaint by a legatee.]

## No. 45.

## FORECLOSURE OR SALE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage :—

- (a) (date) ;
- (b) (names of mortgagor and mortgagee) ;
- (c) (sum secured) ;
- (d) (rate of interest) ;
- (e) (property subject to mortgage) ;
- (f) (amount now due) ;
- (g) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims).

(If the plaintiff is mortgagee in possession, add)

3. The plaintiff took possession of the mortgaged property on the day of \_\_\_\_\_ and is ready to account as mortgagee in possession from that time.

[As in paras. 4 and 5 of Form No. I.]

6. The plaintiff claims—

- (1) payment, or in default [sale or] foreclosure [and possession] ;

[Where Order 34, rule 6, applies.]

- (2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

## No. 46.

## REDEMPTION.

(Title.)

*A. B.*, the above-named plaintiff, states as follows :—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

*(The First Schedule. Appendix A.—Pleadings.)*

2. The following are the particulars of the mortgage :—

- (a) (date) :
  - (b) (names of mortgagor and mortgagee) ;
  - (c) (sum secured) ;
  - (d) (rate of interest) ;
  - (e) (property subject to mortgage) ;
  - (f) *(if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims.)*
- (If the defendant is mortgagee in possession, add)*

3. The defendant has taken possession [*or has received the rents*] of the mortgaged property.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [*and to have possession thereof*].

---

No. 47.

SPECIFIC PERFORMANCE (No. 1).

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. By an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ and signed by the defendant, he contracted to buy of [*or sell to*] the plaintiff certain immoveable property therein described and referred to, for the sum of \_\_\_\_\_ rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

*[As in paras. 4 and 5 of Form No. 1.]*

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [*or to accept a transfer and possession of the said property*] and to pay the costs of the suit.

---

No. 48.

SPECIFIC PERFORMANCE (No. 2).

*(Title.)*

A. B., the above-named plaintiff, states as follows :—

1. On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, the plaintiff and

*(The First Schedule. Appendix A.—Pleadings.)*

defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable property described in the agreement.

2. On the                      day of                      19   , the plaintiff entered                      rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the              day of              19   , the plaintiff again demanded such transfer. [*Or* the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[*As in paragraphs 4 and 5 of Form No. 1.*]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*] ;

(2)                      rupees compensation for withholding the same.

---

No. 49.

PARTNERSHIP.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. He and *C. D.*, the defendant, have been for

years [*or months*] past carrying on business together under articles of partnership in writing [*or under a deed, or under a verbal agreement*].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [*Or* the defendant has committed the following breaches of the partnership articles :—

(1)

(2)

(3)                      ]

[ *As in paragraphs 4 and 5 of Form No. 1.*]

5. The plaintiff claims—

(1) dissolution of the partnership ;

(2) that accounts be taken ;

(3) that a receiver be appointed.

## (The First Schedule. Appendix A.—Pleadings.)

(N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution; and instead insert a paragraph stating the facts of the partnership having been dissolved.)

## (4) WRITTEN STATEMENTS.

## General defences.

The defendant denies that (*set out facts*). Denial.

The defendant does not admit that (*set out facts*).

The defendant admits that but says that

The defendant denies that he is a partner in the defendant firm of Protest.

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them

**XV of 1877.** The suit is barred by article or article of the second schedule to Limitation. the<sup>1</sup> Indian Limitation Act, 1877.

The Court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*). Jurisdiction.

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

The defendant has been adjudged an insolvent. Insolvency.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

The defendant was a minor at the time of making the alleged contract. Minority.

The defendant as to the whole claim (*or as to Rs. part of the money claimed. or as the case may be*) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim (*or the part aforesaid*). Payment into Court.

The performance of the promise alleged was remitted on the (*date*). Performance remitted.

The contract was rescinded by agreement between the plaintiff and defendant. Rescission.

The plaintiff's claim is barred by the decree in suit (*give the reference*). Res judicata.

The plaintiff is estopped from denying the truth of (*insert statement as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*). Estoppel.

Since the institution of the suit, that is to say, on the day of (*set out facts*).

Ground of defence subsequent to institution of suit.

<sup>1</sup> See now the Indian Limitation Act, 1908 (IX of 1908), *infra*.



*(The First Schedule. Appendix A.—Pleadings.)*

## No. 1.

## DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs.

[or]

- |    |                    |           |   |
|----|--------------------|-----------|---|
| 4. | } Except as to Rs. | , same as | $\left\{ \begin{array}{l} 1. \\ 2. \\ 3. \end{array} \right.$ |
| 5. |                    |           |   |
| 6. |                    |           |   |

7. The defendant [or A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C. D., the plaintiff's agent] on the day of 19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19 .

## No. 2.

## DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

## No. 3.

## DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

## No. 4.

## DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows :—

				Rs.
1907, January, 25th	...	...	...	150
„ February, 1st	.	...	...	50
	Total	...		<u>200</u>

*(The First Schedule. Appendix A.—Pleadings)*

2. As to the whole [or as to Rs. \_\_\_\_\_, part of the money claimed] the defendant made tender before suit of Rs. \_\_\_\_\_ and has paid the same into Court.

---

No. 5.

## DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to \_\_\_\_\_ of \_\_\_\_\_ Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses ; and the person under whose charge and control the said carriage was, was the servant of the said.

2. The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

---

No. 6.

## DEFENCE IN ALL SUITS FOR WRONGS.

1. Denial of the several acts [or matters] complained of.

---

No. 7.

## DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows :—

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta :—

45 maunds at Rs. 2 per maund \_\_\_\_\_ . . . . . Rs. 90.

---

No. 8.

## DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [assignee, etc.].

2. The book was not registered.

3. The defendant did not infringe.

*(The First Schedule. Appendix A.—Pleadings.)*

## No. 9.

## DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

## No. 10.

## DEFENCES IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [*or do what is complained of*]

*[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i.e., whether by prescription, grant or what.]*

4. The plaintiff has been guilty of laches of which the following are particulars :—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. *[If other grounds are relied on, they must be stated, e.g., limitation as to past damage.]*

## No. 11.

## DEFENCE TO SUIT FOR FORECLOSURE.

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (*if more than one transfer is alleged, say which is denied*).

3. The suit is barred by article \_\_\_\_\_ of the second schedule to the XV of 1877.  
Indian Limitation Act, 1877.

4. The following payments have been made, viz.—

					Rs.
(Insert date)	„	...	...	...	1,000
(Insert date.)	„	..	...	...	500

*See now the Indian Limitation Act, 1908 (IX of 1908). infra.*

*(The First Schedule.—Appendix A.—Pleadings.)*

5. The plaintiff took possession on the \_\_\_\_\_ of \_\_\_\_\_, and has received the rents ever since.

6. That plaintiff released the debt on the \_\_\_\_\_

7. The defendant transferred all his interest to *A. B.* by a document, dated \_\_\_\_\_.

---

No. 12.

## DEFENCE TO SUIT FOR REDEMPTION.

XV of 1877. 1. The plaintiff's right to redeem is barred by article \_\_\_\_\_ of the second schedule to the <sup>1</sup>Indian Limitation Act, 1877.

2. The plaintiff transferred all interest in the property to *A. B.*

3. The defendant, by a document dated the \_\_\_\_\_ day of \_\_\_\_\_ transferred all his interest in the mortgage-debt and property comprised in the mortgage to *A. B.*

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

*(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)*

---

No. 13.

## DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.

2. *A. B.* was not the agent of the defendant *(if alleged by plaintiff)*.

3. The plaintiff has not performed the following conditions—*(Conditions)*.

4. The defendant did not—*(alleged acts of part performance)*.

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—*(State why)*.

6. The agreement is uncertain in the following respects—*(State them)*.

7. *(or)* The plaintiff has been guilty of delay.

8. *(or)* The plaintiff has been guilty of fraud *(or misrepresentation)*.

9. *(or)* The agreement is unfair.

10. *(or)* The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) *(or as the case may be)*.

---

<sup>1</sup> See now the Indian Limitation Act, 1908 (IX of 1908), *infra*.

*(The First Schedule.—Appendix A.—Pleadings.)*

12. The agreement was rescinded under Conditions of Sale, No. 11 (or by mutual agreement).

*(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc.)*

## No. 14.

## DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

1. A. B.'s will contained a charge of debts ; he died insolvent ; he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs.        and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs.        .

2. The defendant applied the whole of the said sums and the sum of Rs.        which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the        day of 19        , and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

## No. 15.

## PROBATE OF WILL IN SOLFMN FORM.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the <sup>1</sup> Indian Succession Act, 1865 [or of the <sup>2</sup> Hindu Wills Act, 1870].

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

<sup>1</sup> Genl. Acts, Vol. I

<sup>2</sup> Genl. Acts, Vol. II.

(The First Schedule.—Appendix A.—Pleadings.)

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [*or of the contents of the residuary clause in the said will, as the case may be*].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(1) that the Court will pronounce against the said will and codicil pronounced by the plaintiff :

(2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

---

No. 16.

PARTICULARS. O. 6, r. 5.)

(*Title of suit.*)

The following are the particulars of (*here state the matters in respect of which particulars have been ordered*) delivered pursu-

Particulars. ant to the order of the of

(*Here set out the particulars ordered in paragraphs if necessary.*)



(*The First Schedule — Appendix B.—Process.*)

## No. 2.

## SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, rr. 1, 5.)

(*Title.*)

To

[*Name, description and place of residence.*]

## WHEREAS

has instituted a suit against you for  
you are hereby summoned to appear in this Court in person, or by a pleader  
duly instructed, and able to answer all material questions relating to the suit,  
or who shall be accompanied by some person able to answer all such questions  
on the                      day of                      19 , at                      o'clock  
in the                      noon, to answer the claim ; and you are directed to produce  
on that day all the documents upon which you intend to rely in support of  
your defence.

Take notice that, in default of your appearance on the day before men-  
tioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this  
day of                      19 .

*Judge.*

NOTICE.—1. Should you apprehend your witnesses will not attend of their own  
accord, you can have a summons from this Court to compel  
the attendance of any witness, and the production of any  
document that you have a right to call on the witness to  
produce, on applying to the Court and on depositing the  
necessary expenses.

2. If you admit the claim, you should pay the money into Court to-  
gether with the costs of the suit, to avoid execution of the  
decree, which may be against your person or property, or both.



(*The First Schedule.—Appendix B.—Process.*)

No. 3.

SUMMONS TO APPEAR IN PERSON. (O. 5, r. 3.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS

has instituted a suit against you for  
you are hereby summoned to appear in this Court in person on the  
day of 19 ,  
at o'clock in the noon, to  
answer the claim ; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge.*

---

No. 4.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

(O. 37, r. 2.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. , balance of principal and interest due to him as the of a of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for costs.

(*The First Schedule.—Appendix B.—Process.*)

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge.*

---

No. 5.

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF. (O. 1, r. 10.)

(*Title.*)

To

[*Name, description and place of residence.*]

WHEREAS has instituted the above  
suit against for  
and whereas it appears necessary that you should be added as a plaintiff in the  
said suit in order to enable the Court effectually and completely to adjudicate  
upon and settle all the questions involved :

Take notice that you should on or before the day of  
19 signify to this Court whether you consent  
to be so added.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

*Judge.*

---

No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT.

(O. 22, r. 4)

(*Title.*)

To

WHEREAS the plaintiff instituted a suit in  
this Court on the day of 19 ,  
against the defendant who has since  
deceased, and whereas the said plaintiff has made an application to this Court,  
alleging that you are the legal representative of the said  
deceased, and desiring that you be made the defendant in his stead :



(*The First Schedule.—Appendix B.—Process.*)

No. 9.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR SOLDIER. (O. 5, rr. 27, 28.)

(*Title.*)

To

UNDER the provisions of Order V, rule 27 (*or 28, as the case may be*), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

*Judge.*

---

No. 10.

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT.

(O. 5, r. 28.)

(*Title.*)

Read proceeding from the		forwarding
		for service on
in Suit No.	of 19	of that
Court.		

Read Serving Officer's endorsement stating that the  
and proof of the above having been duly taken by me on the  
oath of and  
it is ordered that the be  
returned to the with  
a copy of this proceeding.

*Judge.*

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

(The First Schedule.—Appendix B.—Process.)

No. 11.

AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY RETURN OF A SUMMONS OR  
NOTICE. (O. 5, r. 18.)

(Title.)

The Affidavit of \_\_\_\_\_ son of \_\_\_\_\_  
I \_\_\_\_\_ make (at  
affirm

and say as follows :—

(1) I am a process-server of this Court.

(2) On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ I received a  
summons  
notice issued by the Court of \_\_\_\_\_

\_\_\_\_\_ in Suit No. \_\_\_\_\_  
of 19\_\_\_\_ in the said Court, dated the \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_ for service on \_\_\_\_\_

(3) The said \_\_\_\_\_ was at the  
time personally known to me, and I served the said summons  
notice  
on him  
her on the \_\_\_\_\_ day of \_\_\_\_\_

19\_\_\_\_ at about \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at  
by tendering a copy thereof to him  
her and re-  
quiring his  
her signature to the original summons  
notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in  
whose presence.

(b) Signature of process-server.

or,

(3) The said \_\_\_\_\_ not being personally known to me  
accompanied me to  
and pointed out to me a person whom  
he stated to be the said \_\_\_\_\_

\_\_\_\_\_, and I served the said summons  
notice on him  
her  
on the \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, at about \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at \_\_\_\_\_ by  
tendering a copy thereof to him  
her and requiring his  
her signature to  
the original summons  
notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process and in whose  
presence.

(b) Signature of process-server.

or,

(The First Schedule.—Appendix B.—Process.)

(3) The said \_\_\_\_\_ and the house in which he ordinarily resides being personally known to me, I went to the said house, in \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ and there on the \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, I did not find the said \_\_\_\_\_

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One \_\_\_\_\_ accompanied me to \_\_\_\_\_ and there pointed out to me \_\_\_\_\_ which he said was the house in which ordinarily resides. I did not find the said there

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or

*If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.*

Sworn  
Affirmed by the said \_\_\_\_\_

before me this

day of \_\_\_\_\_

19 .

*Empowered under section 139 of the Code of Civil Procedure, 1905, to administer the oath to deponents.*

\_\_\_\_\_  
No. 12.

NOTICE TO DEFENDANT. (O. 9, r. 6.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons ;

*(The First Schedule.—Appendix B.—Process.)*

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the            day of            19    is now fixed for the hearing of the same ; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this            day of  
19    .

*Judge.*

---

No. 13.

SUMMONS TO WITNESS. (O. 16, rr. 1, 5.)

To

*(Title.)*

WHEREAS your attendance is required to  
on behalf of the            in the above suit  
you are hereby required [personally] to appear before this Court on the  
   day of            19    ,  
at            o'clock in the forenoon, and to bring with you [or to send  
to this            Court].

A sum of Rs.            , being your travelling and other expenses  
and subsistence allowance for one day, is herewith sent. If you fail to comply  
with this order without lawful excuse, you will be subject to the consequence  
of non-attendance laid down in rule 12 of Order XVI of the Code of Civil  
Procedure, 1908.

GIVEN under my hand and the seal of the Court, this            day of  
19    .

*Judge.*

NOTICE.—(1) If you are summoned only to produce a document and not to  
give evidence, you shall be deemed to have complied  
with the summons if you cause such document  
to be produced in this Court on the day and  
hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs.  
   will be tendered to you for each day's attendance  
beyond the day specified.

(The First Schedule. —Appendix B.—Process.)

## No. 14.

## PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.

(O. 16, r. 10.)

(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law : and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons : This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1903, issued requiring the attendance of the witness in this Court on the       day of       19       at       o'clock in the forenoon and from day to day until he shall have leave to depart ; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this       day of       19       .

*Judge.*

## No. 15.

## PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.

(O. 16, r. 10.)

(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons : This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1903, issued requiring the attendance of the witness in this Court on the       day of       19       at       o'clock in the forenoon, and from day to day until he shall have leave to depart ; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this       day  
of       19       .

*Judge.*



(*The First Schedule.—Appendix B.—Process.*)

No. 16.

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS.

(O. 16, r. 10.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS the witness

cited by

has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court ; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within days.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Judge.*

No. 17.

WARRANT OF ARREST OF WITNESS. (O. 16, r. 10.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons] ; You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19 , with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Judge.*

(The First Schedule.—Appendix B.—Process.)

No. 18.

WARRANT OF COMMITTAL. (O. 16, r. 18.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff *(or* defendant, in the above-named suit has made application to this Court that security be taken for the appearance of

to give evidence *or* to produce a document, on the                      day  
of                      19                      , and whereas the Court has called upon the  
said                      to furnish such security, which he has failed  
to do ; This is to require you to receive the said                      into your

custody in the civil prison and to produce him before this Court at

on the said day and on such other day or days as may be here-  
after ordered.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19                      .

*Judge.*

No. 19.

WARRANT OF COMMITTAL. (O 16, r. 18.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS                      , whose attendance is required  
before this Court in the above-named case to give evidence (*or* to produce a  
document), has been arrested and brought before the Court in custody ; and  
whereas owing to the absence of the plaintiff (*or* defendant) the said  
cannot give such evidence *or* produce such document, and whereas the Court  
has called upon the said                      to give security for his appearance

on the                      day of                      19                      , at  
which he has failed to do ; This is to require you to receive the said  
into your custody in the civil prison and to produce him before this Court  
at                      on the                      day of                      19                      .

GIVEN under my hand and the seal of the Court, this  
day of                      19                      .

*Judge.*

(The First Schedule.—Appendix C.—Discovery, Inspection and Admission.)

## APPENDIX C.

### DISCOVERY, INSPECTION AND ADMISSION.

No. 1.

ORDER FOR DELIVERY OF INTERROGATORIES. (O. 11, r. 1.)

In the Court of  
Civil Suit No. \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_ .  
A. B. ... .. *Plaintiff,*  
... .. *against*  
C. D., E. F. and G. H. ... .. *Defendants.*  
Upon hearing \_\_\_\_\_ and upon reading the affidavit of  
filed the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ ; It is ordered  
that the \_\_\_\_\_ be at liberty to deliver to the  
interrogatories in writing, and that the said \_\_\_\_\_ do answer the  
interrogatories as prescribed by Order XI, rule 8, and that the costs of the  
application be \_\_\_\_\_

No. 2.

INTERROGATORIES. (O. 11, r. 4.)

(Title as in No. 1 *supra*.)

Interrogatories on behalf of the above-named [*plaintiff or defendant C.D.,*] for the examination of the above-named [*defendants E. F. and G. H. or plaintiff*].

1. Did not, etc.

2. Has not, etc.

etc.                      etc.                      etc.

[The defendant E. F. is required to answer the interrogatories numbered \_\_\_\_\_].

The defendant G. H. is required to answer the interrogatories numbered ].

## No. 3.

ANSWER TO INTERROGATORIES. (O. 11, r. 9.)

(Title as in No. 1, *supra*.)

The answer of the above-named defendant *F. F.* to the interrogatories for his examination by the above-named plaintiff.

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

In answer to the said interrogatories, I, the above-named *E. F.*, make oath and say as follows :—

1. } Enter answers to interrogatories in paragraphs numbered consecutively.  
2. }

3. I object to answer the interrogatories numbered on the ground that [*state grounds of objection*].

---

No. 4.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 12.)

(*Title as in No. 1, supra.*)

Upon hearing

It is ordered that the \_\_\_\_\_ do within \_\_\_\_\_ days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be \_\_\_\_\_

---

No. 5.

AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 13.)

(*Title as in No. 1, supra.*)

I, the above-named defendant *C.D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [*state grounds of objection*].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto

4. The last-mentioned documents were last in my possession or power on [*state when and what has become of them, and in whose possession they now are*].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

---

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION.

(O. 11, r. 14.)

(*Title as in No. 1, supra.*)

Upon hearing                      and upon reading the affidavit of  
 filed the                      day of                      19                      ; It is ordered that the  
 do, at all seasonable times, on reasonable notice, produce at                      , situate at  
                     , the following documents, namely,                      , and that  
 the                      be at liberty to inspect and peruse the documents so pro-  
 duced and to make notes of their contents. In the meantime it is ordered  
 hat all further proceedings be stayed and that the costs of this application  
 be

---

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16.)

(*Title as in No. 1, supra.*)

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*plaint or written statement or affidavit*] dated the                      day of                      19                      ].

[*Describe documents required.*]

*X. Y., Pleader for the*

To Z., Pleader for the

---

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. 11, r. 17.)

(*Title as in No. 1, supra.*)

Take notice that you can inspect the documents mentioned in your notice of the                      day of                      19                      [*except the documents num-bered                      in that notice*] at [*insert place of inspection*] on Thursday next the                      instant, between the hours of 12 and 4 o'clock.

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

Or, that the [plaintiff or defendant] objects to giving you inspection of documents mentioned in your notice of the                      day of                      19                      on the ground that [state the ground] :—

---

No. 9.

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3.)

(*Title as in No. 1, supra.*)

Take notice that the plaintiff [or defendant] in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [or plaintiff], his pleader or agent at                      on                      between the hours of                      and the defendant [or plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., pleader [or agent] for defendant [or plaintiff].

[Here describe the documents and specially as to each document whether it is original or a copy.]

---

No. 10.

NOTICE TO ADMIT FACTS. (O. 12, r. 5.)

(*Title as in No. 1, supra.*)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., pleader [or agent] for plaintiff [or defendant].

To E. F., pleader [or agent] for defendant [or plaintiff].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.

(*The First Schedule.—Appendix C.—Discovery, Inspection and Admission.*)

4. That O. died on the 1st April, 1896.

5. That O. was never married.

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No. 11.

ADMISSION OF FACTS PURSUANT TO NOTICE. (O. 12, r. 5.)

(*Title as in No. 1, supra.*)

The defendant [*or plaintiff*] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit :

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [*or plaintiff*] on any other occasion or by any one other than the plaintiff [*or defendant, or party requiring the admission*].

E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*].

To G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January, 1890 . . . . .	1.
2. That he died intestate . . . . .	2
3. That N. was his lawful son . . . . .	3. But not that he was his only lawful son.
4. That O. died . . . . .	4 But not that he died on the 1st April, 1896.
That O. was never married . . . . .	5.

No. 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. 12, r. 8.)

(*Title as in No. 1, supra.*)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

G. H., *pleader* [*or agent*] *for plaintiff* [*or defendant*].

To E. F., *pleader* [*or agent*] *for defendant* [*or plaintiff*].

## APPENDIX D.

## DECREES.

## No. 1.

DECREE IN ORIGINAL SUIT. (O. 20, rr. 6, 7.)

(Title.)

Claim for

THIS suit coming on this day for final disposal before  
 in the presence of \_\_\_\_\_ for the plaintiff and of \_\_\_\_\_  
 for the defendant, it is ordered and decreed that \_\_\_\_\_  
 and that the sum of Rs. \_\_\_\_\_ be paid by the \_\_\_\_\_  
 to the \_\_\_\_\_ on account of the costs of this suit,  
 with interest thereon at the rate of \_\_\_\_\_ per cent. per annum from this date  
 to date of realization.

GIVEN under my hand and the seal of the Court, this day of

19 .

Judge.

## Costs of Suit.

Plaintiff.				Defendant.			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint . . .				Stamp for power . . .			
2. Do. for power . . .				Do. for petition . . .			
3. Do. for exhibits . . .				Pleader's fee . . .			
4. Pleader's fee on Rs. . .				Subsistence for witnesses . .			
5. Subsistence for witnesses . .				Service of process . . .			
6. Commissioner's fee . . .				Commissioner's fee . . .			
7. Service of process . . .							
Total . . .				Total . . .			

## No. 2.

SIMPLE MONEY DECREE. (Section 34.)

(Title.)

Claim for

THIS suit coming on this day for final disposal before \_\_\_\_\_ in  
 the presence of \_\_\_\_\_ for the plaintiff





(*The First Schedule.—Appendix D.—Decrees.*)

(2) That if such payment is not made on or before the said       day of  
19       the defendant shall be debarred from all right to redeem  
the property.

*Schedule.*

*Description of the mortgaged property.*

---

No. 4.

PRELIMINARY DECREE FOR SALE. (O. 34, r. 4.)

(*Title.*)

THIS suit coming on this day, etc. ; It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the       day of       19       is Rs.       , and that such amount shall carry interest at the rate of       per cent. per annum until realization ; and it is decreed as follows :—

(1) That if the defendant pays into Court the amount so declared due on or before the said       day of       19       , the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title add *or by those under whom he claims.*] [Where the plaintiff is in possession add *and shall put the defendant in possession of the property.*]

(2) That if such payment is not made on or before the said       day of       19       the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant.

(3) That if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

*Schedule.*

*Description of the mortgaged property.*

(The First Schedule.—Appendix D.—Decrees.)

No. 5.

PRELIMINARY DECREE FOR REDEMPTION. (O. 34, r. 7.)

(Title.)

THIS suit coming on this day, etc. ; It is hereby declared that the amount due to the defendant on account of principal, interest and costs calculated up to the            day of            19            is Rs.            ;

And it is decreed as follows :—

(1) That if the plaintiff pays into Court the amount so declared due on or before the said            day of            19            , the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him. [Where the defendant claims by derived title add *or by those under whom he claims*] [Where the defendant is in possession add *and shall put the plaintiff in possession of the property.*]

(2) That if such payment is not made on or before the said            day of            19            , the plaintiff shall be debarred from all right to redeem the property. [If the mortgage is simple or usufructuary, substitute *the property shall be sold.*]

*Schedule.*

*Description of the mortgaged property.*

No. 6.

DECREE FOR FORECLOSURE.—FIRST MORTGAGEE *v.* SECOND MORTGAGEE AND MORTGAGOR.—SUCCESSIVE PERIODS FOR REDEMPTION.

(Title.)

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the            day of            19

(a) is Rs. *x*, and that on the            day of            19

(b) there will be due to the plaintiff for interest the further sum of Rs.

, making in all Rs. *y* ; and it is further declared that on the            day of

19            (b) there will be due to the first defendant on account of principal, interest and costs Rs. *z* ;

And it is decreed as follows :—

(a) Insert a day within six months from the date of decree.

(b) Insert a day within three months from the date mentioned in (a).

*(The First Schedule.—Appendix D.—Decrees.)*

(1) That if the first defendant pays into Court the said sum of Rs. *x* on or before the said                      day of                      19                      (*a*) the plaintiff shall deliver up, etc. (as in Form No. 2).

(2) That in default of the first defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(3) That in case of such foreclosure and if the second defendant pays into Court the said sum of Rs. *y*, on or before the                      day of                      19                      , (*b*) the plaintiff shall deliver up, etc., (as in Form No. 3).

(4) That in default of the second defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(5) That in case the first defendant shall redeem the mortgaged property, if the second defendant pays into Court the said sums of Rs. *y* and Rs. *z* on or before the                      day of                      19                      , (*c*) the first defendant shall deliver up, etc. (as in Form No. 3).

(6) That in default of the second defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property. [Where the second defendant is in possession add *and shall put the first defendant in possession of the property.*]

---

No. 7.

DECREE FOR SALE.—FIRST MORTGAGEE *v.* SECOND MORTGAGE AND MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

*(Title.)*

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the                      day of 19                      is Rs. *x* and that on the said day there will be due to the first defendant on account of principal, interest and costs Rs. *y* ;

And it is decreed as follows :—

(1) That if the defendants or either of them pay into Court the said sum of Rs. *x* on or before the said                      day of                      19                      the plaintiff shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the                      day of                      19                      the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court to the credit of this suit, and applied, first, in payment to the plaintiff of the said sum of Rs. *x* and such subsequent interest and costs as may be allowed by the Court ; secondly, in payment to

*(The First Schedule.—Appendix D.—Decrees.)*

the first defendant of the said sum of Rs. *y* and such subsequent interest and costs as aforesaid ; and that the balance, if any, be paid to the second defendant.

(3) That in case the defendants or either of them shall pay the said sum of Rs. *x* as aforesaid he or they shall be at liberty to apply to the Court that the plaintiff's mortgage may be kept alive for the benefit of the person making the said payment or otherwise as he or they may be advised.

(4) That if the net proceeds of the sale are insufficient to pay the said sum of Rs. *x* and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

---

No. 8.

DECREE FOR SALE.—SECOND MORTGAGEE *v.* FIRST MORTGAGEE AND  
MORTGAGOR.—ONE PERIOD FOR REDEMPTION.

*(Title.)*

[Insert declarations of the amounts due to the plaintiff Rs. *y* and to the first defendant Rs. *x* as in Form No. 7.]

And it is decreed as follows :—

(1) That if the plaintiff or the second defendant pays into Court the said sum of Rs. *x* on or before the said day of 19 , the first defendant shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the day of 19 , the first defendant shall be at liberty to apply that the suit be dismissed or for the sale of the mortgaged property ; and in case he shall apply for a sale the mortgaged property or a sufficient part thereof shall be sold free from the incumbrances of the plaintiff and first defendant, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be paid into Court and applied, first, in payment to the first defendant of the said sum of Rs. *x* and such subsequent interest and costs as may be allowed by the Court : secondly, in payment to the plaintiff of the said sum of Rs. *y* and such subsequent interest and cost as aforesaid ; and that the balance, if any, be paid to the second defendant.

(3) That if the plaintiff shall pay the said sum of Rs. *x* into Court on or before the day of 19 , the second defendant shall be at liberty to pay into Court the said sum and the sum of Rs. *y* on or before the day of 19 , and thereupon the plaintiff shall deliver, etc. as in Form No. 4).

(The First Schedule.—Appendix D.—Decrees.)

(4) That if the plaintiff shall pay the said sum as aforesaid, but the second defendant shall fail to pay the said sums as aforesaid, the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be applied in payment to the plaintiff of the said sums of Rs. *x* and Rs. *y* and such subsequent interest and costs as may be allowed by the Court, and that the balance, if any, be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the said sums, interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

---

### No. 9.

DECREE FOR SALE.—SUB-MORTGAGEE v. MORTGAGEE AND MORTGAGOR, THE  
AMOUNT OF THE ORIGINAL MORTGAGE EXCEEDING THAT OF THE [  
SUB-MORTGAGE.

(Title.)

[Insert declarations of the amounts due to the plaintiff Rs. *x* and to the first defendant Rs. *y* as in Form No. 7.]

And it is decreed as follows :—

(1) The first defendant and the second defendant shall be at liberty to pay into Court the said sums of Rs. *x* and *y* respectively on or before the day of 19 , and upon either of the said payments being made the plaintiff shall deliver up, etc. (as in Form No. 4), and thereupon the sum of Rs. *x* shall be paid to the plaintiff.

(2) In the event of payment by the second defendant as aforesaid the first defendant shall also deliver up, etc. (as in Form No. 4), and thereupon the residue (after payment to the plaintiff as aforesaid) shall be paid to the first defendant.

(3) In default of payment by the first and second defendants as aforesaid the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after deducting thereout the expenses of the sale) shall be paid into Court and applied, first, in payment to the plaintiff of the said sum of Rs. *x* and such subsequent interest and costs as may be allowed by the Court (but so that the aggregate amount of principal and interest shall not exceed the amount of principal and interest due to the first defendant) ; secondly, in payment to the first defendant of the excess of Rs. *y* over Rs. *x* and such subsequent interest and costs as aforesaid ; and that the balance, if any, be paid to the second defendant.

*(The First Schedule.—Appendix D.—Decrees)*

(4) In the event of payment by the first defendant and in default of payment by the second defendant as aforesaid, the first defendant shall be at liberty to apply for the sale of the mortgaged property, and thereupon the same or a sufficient part thereof shall be sold, and the net sale-proceeds shall be applied in payment to the first defendant of the said sum of Rs. *y* and such further interest and costs as may be allowed by the Court, and the balance, if any, shall be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the aforesaid sums with further interest and costs, the plaintiff or the first defendant, as the case may be, shall be at liberty to apply for a personal decree for the amount of the balance.

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No. 10.

## FINAL DECREE FOR FORECLOSURE. (O. 34, r. 3.)

*(Title.)*

Upon reading the decree passed in the above suit on the            day of  
           19   , and the application of the plaintiff dated the            day of  
           19   , and after hearing            pleader for the plaintiff and  
           pleader for the defendant, and it appearing that the payment  
 Directed by the said decree has not been made :

It is hereby decreed as follows:—

That the defendant and all persons claiming through or under him be  
 debarred from all right to redeem the mortgaged property set out and describ-  
 ed in the schedule hereunto annexed. [Where the defendant is in possession  
 add *and shall put the plaintiff in possession of the said property.*]

*Schedule.**Description of the mortgaged property.*


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No. 11.

## DECREE AGAINST MORTGAGOR PERSONALLY. (O. 34, r. 6.)

*(Title.)*

Whereas the net proceeds of the sale held under the final decree for sale  
 passed in this suit on the            day of            19   , and now in  
 Court to the credit of this suit, amount to Rs. *y*, and there is now due to the  
 plaintiff the sum of Rs. *x* mentioned in the said decree together with the

(The First Schedule.—Appendix D.—Decrees.)

further sum of Rs.                      interest thereon at the rate of 6 per cent. per annum from the                      day of                      19                      to this day, and also the sum of Rs.                      for his costs of this suit subsequent to the decree, making a balance due to the plaintiff of Rs. *z* ; And whereas it appears to this Court that the defendant is personally liable for the said balance ;

It is hereby decreed as follows :—

(1) That the said sum of Rs. *y* be paid out of the Court to the plaintiff.

(2) That the defendant do pay to the plaintiff the said sum of Rs.                      with interest thereon at the rate of 6 per cent. per annum from this day to the date of realization of the said sum.

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No. 12.

#### DECREE FOR RECTIFICATION OF INSTRUMENT.

(Title.)

It is hereby declared that the                      , dated the                      day of                      19                      does not truly express the intention of the parties to such

And it is decreed that the said                      be rectified by

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No. 13.

#### DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

(Title.)

It is hereby declared that the                      , dated the                      day of                      19                      , and made between                      and                      , is void as against the plaintiff and all other the creditors, if any, of the defendant

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No. 14.

#### INJUNCTION AGAINST PRIVATE NUISANCE.

(Title.)

Let the defendant                      , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.



(The First Schedule.—Appendix D.—Decrees.)

No. 15.

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL.

(Title.)

Let the defendant , his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises in any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16.

INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

(Title.)

Let defendant , his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at , the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT.

(Title.)

It is ordered that the following accounts and inquiries be taken and made ; that is to say :—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In suits by legatees—*

2. That an account be taken of the legacies given by the testator's will.

*In suits by next-of-kin—*

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [or one of the next-of-kin] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases

*(The First Schedule.—Appendix D.—Decrees.)*

an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow omitting the first formal words. The form is continued as in a creditor's suit ]

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of                      next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the                      \* shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9 And that Mr. E. F. be receiver in the suit (*or* proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the                      \* (and shall give security by bond for the due performance of his duties to the amount of                      rupees).

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

- (a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death ;
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof ;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

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\* Here insert name of proper officer.

(The First Schedule.—Appendix D.—Decrees.)

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the \* and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the \* shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the \* to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the \* do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

15. And, lastly, it is ordered that this suit [or proceeding] stand adjourned for making final decree to the day of

[Such part only of this decree is to be used as is applicable to the particular case.]

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No. 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

(Title)

1. It is ordered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of , amounting together to the sum of Rs.

2. Let the \* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a) The costs of the plaintiff to Mr. , his attorney [or pleader] or and the costs of the defendant to Mr. , his attorney [or pleader].

---

\* Here insert name of proper officer.

*(The First Schedule.—Appendix D.—Decrees.)*

(b) And (if any debts are due) with the residue of the said sum of Rs. \_\_\_\_\_ after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the \_\_\_\_\_ \*, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

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No. 19.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

*(Title.)*

1. It is declared that the defendant is personally liable to pay the legacy of Rs. \_\_\_\_\_ bequeathed to the plaintiff;
2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;
3. And it is also ordered that the defendant do, within \_\_\_\_\_ weeks after the date of the certificate of the \_\_\_\_\_ \*, pay to the plaintiff the amount of what the \_\_\_\_\_ \* shall certify to be due for principal and interest;
4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

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No. 20.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

*(Title.)*

1. LET the \_\_\_\_\_ \* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. \_\_\_\_\_, the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the

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\* Here insert name of proper officer.

*(The First Schedule.—Appendix D.—Decrees.)*

intestate, within one week after the taxation of the said costs by the said \*, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—

- (a) Let the defendant, within one week after the taxation of the said costs by the \* as aforesaid, pay one-third share of the said residue to the plaintiffs *A. B.*, and *C. D.*, his wife, in her right as the sister and one of the next-of-kin of the said *E. F.*, the intestate.
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said *E. F.*, the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the \* as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

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No. 21.

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE  
TAKING OF PARTNERSHIP ACCOUNTS.

*(Title.)*

It is declared that the proportionate shares of the parties in the partnership are as follows :—

It is declared that this partnership shall stand dissolved [*or* shall be deemed to have been dissolved] as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership :

2. An account of the debts and liabilities of the said partnership :

---

\* Here insert name of proper officer.

(The First Schedule.—Appendix D.—Decrees.)

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold in the premises, and that the \*may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of and that the \*do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

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No. 22.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS.

(Title.)

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows :—

1. In payment of the debts due by the partnership set forth in the certificate of the \*amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs.

[These costs must be ascertained before the decree is drawn up.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff (or defendant) in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

---

\* Here insert name of proper officer.



(The First Schedule.—Appendix E.—Execution.)

## APPENDIX E.

## EXECUTION.

No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE  
RECORDED AS CERTIFIED. (O. 21, r. 2.)

(Title.)

To

WHEREAS in execution of the decree in the above-named suit  
has applied to this Court that the sum of Rs. recover-  
able under the decree has been  $\frac{\text{paid}}{\text{adjusted}}$  and should be recorded as certi-  
fied, this is to give you notice that you are to appear before this Court  
on the                                      day of                                      19 , to show  
cause why the  $\frac{\text{payment}}{\text{adjustment}}$  aforesaid should not be recorded as  
certified.

GIVEN under my hand and the seal of the Court, this  
day of                                      19 .

Judge.

No. 2.

PRECEPT. (Section 46.)

(Title.)

UPON hearing the decree-holder it is ordered that this precept be sent  
to the Court of                                      at                                      under section 46  
of the Code of Civil Procedure, 1908, with directions to attach the property  
specified in the annexed schedule and to hold the same pending any applica-  
tion which may be made by the decree-holder for execution of the decree.

Schedule.

Dated the                                      day of                                      19 .

Judge.



*(The First Schedule.—Appendix E.—Execution.)*

No. 3.

## ORDER SENDING DECREE FOR EXECUTION TO ANOTHER COURT. (O. 21, r. 6.)

*(Title.)*

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of \_\_\_\_\_ at

for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

*Ordered :*

That a copy of this order be sent to \_\_\_\_\_ with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*Judge.*

No. 4.

## CERTIFICATE OF NON-SATISFACTION OF DECREE. (O. 21, r. 6.)

*(Title.)*

CERTIFIED that no <sup>[1]</sup> satisfaction of the decree of this Court in Suit No. \_\_\_\_\_ of 19 \_\_\_\_\_, a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

*Judge.*

[1] *If partial, strike out "no" and state to what extent.*

*Signature of Judge.*

## (The First Schedule.—Appendix E.—Execution.)

No. 6

## APPLICATION FOR EXECUTION OF DECREE. (O. 21, r. 11.)

In the Court of

I , decree-holder, hereby apply for execution of the decree herein below set forth :—

1	No. of suit.	2	Names of parties.	3	Date of decree.	4	Whether any appeal preferred from decree.	5	Payment or adjustment made, if any.	6	Previous application, if any, with date and result.	7	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	8	Amount of costs, if any, awarded.	9	Against whom to be executed.	10	Mode in which the assistance of the Court is required.
789 of 1897.		A. B.—Plaintiff C. D.—Defendant	.	.	October 11th, 1897.	No.		None.		Rs. 72-4 recorded on application, dated the 4th March, 1899.		Rs. 314-8-2 principal [interest at 6 per cent. per annum, from date of decree till payment].	Rs. A. P. As awarded in the decree . 47 10 4 Subsequently incurred . 8 2 0 Total . 55 12 4		Against the defendant C. D.				<p>[When attachment and sale of moveable property is sought.] I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me.</p> <p>[When attachment and sale of immoveable property is sought.] I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me.</p>

I declare that what is stated herein is true to the best of my knowledge and belief.

Signed , decree-holder.

Dated the day of 19

[When attachment and sale of immoveable property is sought.]

## Description and specification of Property.

The undivided one-third share of the judgment-debtor in a house situated in the village of , value Rs. 40, and bounded as follows :—

*(The First Schedule.—Appendix E.—Execution.)*

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

*Signed* , *decree-holder.*

---

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE. (O. 21, r. 22.)  
(*Title.*)

To

WHEREAS

has made application to this Court for execution of decree in Suit No. of 19 , on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why execution should not be granted.

Given under my hand and the seal of the Court, this day of 19 .

*Judge.*

---

No. 8.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF  
A DECREE FOR MONEY. (O. 21, r. 30.)  
(*Title*)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 ,

DECREE.				
Principal . . .	.			
Interest . . .	.			
Costs . . .	.			
Costs of execution	.			
Further interest	.			
Total .	.			

to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid; These are to command you to attach the moveable property of the said as set forth in the schedule hereunto annexed, or which shall be pointed out to you by the said

and unless the said

shall pay to you the said sum of Rs.

*(The First Schedule.—Appendix E.—Execution.)*

together with Rs. , the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Schedule.*

*Judge.*

---

No. 9.

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED  
BY DECREE. (O. 21, r. 31.)  
(*Title.*)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to deliver to the plaintiff the moveable property (*or a share in the moveable property*) specified in the schedule hereunto annexed, and whereas the said property (*or share*) has not been delivered ;

These are to command you to seize the said moveable property (*or a share of the said moveable property*) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Schedule.*

*Judge.*

---

No. 10.

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT. (O. 21, r. 34.)  
(*Title.*)

To

TAKE notice that on the day of 19 , the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a draft is hereunto annexed, of the immoveable property specified hereunder,

(The First Schedule.—Appendix E.—Execution.)

and that the                      day of                      19                      is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

*Description of Property.*

GIVEN under my hand and the seal of the Court this                      day of  
19   .

*Judge.*

No. 11.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC. (O. 21, r. 35.)

(Title.)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of \_\_\_\_\_  
has been decreed to \_\_\_\_\_

                    , the plaintiff in this suit; You are hereby directed to put the said                      in possession of the same, and you are hereby authorized to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this                      day of  
19 .

*Schedule.*

*Judge.*

No. 12.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE.

(O. 21, r. 37.)

(Title.)

To

WHEREAS \_\_\_\_\_ has made application to this Court for execution of decree in suit No. \_\_\_\_\_ of 19 \_\_\_\_\_ by arrest and imprisonment of your person, you are hereby required to appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this                      day of  
19 .

*Judge.*

## (The First Schedule.—Appendix E.—Execution.)

No. 13.

## WARRANT OF ARREST IN EXECUTION. (O. 21, r. 38.)

(Title.)

To

The Bailiff of the Court.

WHEREAS  
in Suit No.

Principal . . .			
Interest . . .			
Costs . . .			
Execution . . .			
Total .			

was adjudged by a decree of the Court  
of 19 , dated the

day of 19 , to pay to the  
decree-holder the sum of Rs. as  
noted in the margin, and whereas the  
said sum of Rs. has not been paid  
to the said decree-holder in satisfaction of  
the said decree, these are to command you  
to arrest the said judgment-debtor and  
unless the said judgment-debtor shall pay

to you the said sum of Rs. together with Rs. for the costs  
of executing this process, to bring the said defendant before the Court with  
all convenient speed. You are further commanded to return this warrant on  
or before the day of 19 , with an endorse-  
ment certifying the day on which and manner in which it has been executed,  
or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of  
19 .

Judge.

No. 14.

## WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL. (O. 21, r. 40.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS who has been brought  
before this Court this day of 19 , under a  
warrant in execution of a decree which was made and pronounced by the  
said Court on the day of 19 , and by which decree it  
was ordered that the said should  
pay ; And whereas the said

has not obeyed the decree nor satisfied the

*(The First Schedule.—Appendix E.—Execution.)*

Court that he is entitled to be discharged from custody; You are hereby, in the name of the King-Emperor of India, commanded and required to take and receive the said

into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, 1908; and the Court does hereby fix annas per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this  
day of 19 .

*Judge.*

---

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A  
DECREE. (Sections 58, 59.)  
(*Title.*)

To

The Officer in charge of the Jail at  
UNDER orders passed this day, you are hereby directed to set free  
judgment-debtor now in your  
custody.

Dated

*Judge.*

---

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF  
MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO  
A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION  
THEREOF. (O. 21, r. 46.)

(*Title.*)

To

WHEREAS  
has failed to satisfy a decree passed against on the day of



(*The First Schedule.—Appendix E.—Execution.*)

19      in Suit No.              of 19      , in favour of              for Rs.  
             ; It is ordered that the defendant be, and is hereby, prohibited  
 and restrained until the further order of this Court, from receiving from  
             the following property in the possession of the said  
 that is to say,              , to which the defendant is entitled, subject  
 to any claim of the said              , and the said              is  
 hereby prohibited and restrained, until the further order of this Court, from  
 delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this              day of  
 19      .

*Judge.*

---

No. 17.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY  
 NEGOTIABLE INSTRUMENTS. (O. 21, r. 46.)

(*Title.*)

To

WHEREAS

has failed to satisfy a decree passed against              on the      day of  
             19      in Suit No.      of 19      , in favour of      for Rs.      ;  
 It is ordered that the defendant be, and is hereby, prohibited and restrained,  
 until the further order of this Court, from receiving from you a certain debt  
 alleged now to be due from you to the said defendant, namely,  
 and that you, the said              , be, and you are hereby, prohibited  
 and restrained, until the further order of this Court, from making payment of  
 the said debt, or any part thereof, to any person whomsoever or otherwise  
 than into this Court.

GIVEN under my hand and the seal of the Court, this              day of  
             19      .

*Judge.*

(The First Schedule.—Appendix E.—Execution.)

No. 18.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE  
CAPITAL OF A CORPORATION. (O. 21, r. 46.)

(Title.)

To Defendant and to  
Secretary of Corporation.

WHEREAS has failed to satisfy a decree passed against  
on the day of 19 , in Suit No.  
of 19 , in favour of , for Rs. ; It is ordered  
that you, the defendant, be, and you are hereby, prohibited and restrained,  
until the further order of this Court, from making any transfer of  
shares in the aforesaid Corporation, namely, , or from receiving  
payment of any dividends thereon ; and you, , the Secre-  
tary of the said Corporation, are hereby prohibited and restrained from per-  
mitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of  
19 .

Judge.

No. 19.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY  
COMPANY OR LOCAL AUTHORITY. (O. 21, r. 48.)

(Title.)

To  
WHEREAS , judgment-debtor in the above-named case, is a (*describe office  
of judgment-debtor*) receiving his salary (*or allowances*) at your hands ; and  
whereas , decree-holder in the said case, has applied in  
this Court for the attachment of the salary (*or allowances*) of the said  
to the extent of due to him under the decree ; You are  
hereby required to withhold the said sum of from the salary of the  
said in the monthly instalments of and to  
remit the said sum (*or monthly instalments*) to this Court.

GIVEN under my hand and the seal of the Court, this day  
of 19 .

Judge.

(The First Schedule.—Appendix E.—Execution.)

## No. 20.

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT. (O. 21, r. 51.)

(Title.)

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the  
day of 19 , for the attachment of ;  
You are hereby directed to seize the said and bring the same  
into Court.

GIVEN under my hand and the seal of the Court, this day of  
19 .

Judge.

---

No. 21.

## ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY  
SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERN-  
MENT. (O. 21, r. 52.)

(Title.)

To

SIR,

The plaintiff having applied, under rule 52 of Order XXI of the Code of  
Civil Procedure, 1908, for an attachment of certain money now in your hands  
(*here state how the money is supposed to be in the hands of the person addres-  
sed, on what account, etc.*), I request that you will hold the said money sub-  
ject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

Judge.

Dated the day of 19 .

*The First Schedule.—Appendix E.—Execution.*

No. 22.

NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT (O. 21,  
r. 53).

(Title.)

To

The Judge of the Court of  
SIR,

I have the honour to inform you that the decree obtained in your Court  
on the                      day                      of                      19                      , by  
in Suit No                      of 19                      , in which he was                      and  
was                      has been attached by this Court on  
the application of                      , the                      in the suit specified above.  
You are therefore requested to stay the execution of the decree of your Court  
until you receive an intimation from this Court that the present notice has  
been cancelled or until execution of the said decree is applied for by the  
holder of the decree now sought to be executed or by his judgment debtor

I have the honour, etc.,

*Judge.*

Dated the                      day of                      19                      .

No. 23.

NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE. (O.  
21, r. 53.)

(Title.)

To

WHEREAS an application has been made in this Court by the decree-holder  
in the above suit for the attachment of a decree obtained by you on the

day of                      19                      , in the Court of

in Suit No.                      of 19                      , in which

was                      and                      was

It is ordered that you, the said                      , be, and you are hereby,  
prohibited and restrained, until the further order of this Court, from trans-  
ferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this                      day of  
19                      .

*Judge.*

2 E

*(The First Schedule.—Appendix E.—Execution.)*

No. 24.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY. (O. 21, r. 54.)

*(Title.)*

Tc defendant.

WHEREAS you have failed to satisfy a decree passed against you on the  
day of 19 , in Suit No.  
of 19 , in favour of for Rs.

; It is ordered that you, the said  
be, and you are hereby, prohibited and restrained, until the further order of  
this Court, from transferring or charging the property specified in the  
schedule hereunto annexed, by sale, gift or otherwise, and that all persons be,  
and that they are hereby, prohibited from receiving the same by purchase,  
gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of  
19 .

*Schedule.**Judge.*

No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ETC., OF MONEY, ETC., IN THE HANDS  
OF A THIRD PARTY. (O. 21, r. 56).

*(Title.)*

To

WHEREAS the following property has been attached in exe-  
cution of a decree in Suit No. of 19 , passed on  
the day of 19 , in favour of  
for Rs. ; It is ordered that the property so at-  
tached, consisting of Rs. in money and Rs.

in currency-notes, or a sufficient part thereof to satisfy the said decree,  
shall be paid over by you, the said  
to

GIVEN under my hand and the seal of the Court, this day of  
19 ;

*Judge.*

(The First Schedule.—Appendix F.—Execution.)

No. 26.

NOTICE TO ATTACHING CREDITOR. (O. 21, r. 58.)

(Title).

To

WHEREAS

has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Suit No. of 19, this is to give you notice to appear before this Court on, the day of 19, either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 19.

*Judge.*


---

 No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

(O. 21, r. 66.)

(Title.)

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving days' previous notice, by affixing the same in this Court-house, and after making due proclamation, the property attached under a warrant from this Court, dated the day of 19, in execution of a decree in favour of in Suit No. of 19 or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of 19, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19.

*Judge.*

(The First Schedule.—Appendix E.—Execution)

No 28.

NO ICE OF THE DAY FIXED FOR SETTING A SALE PROCLAMATION. (O. 21, r. 66.)

(Title.)

To

Judgment-debtor.

WHEREAS in the above-named suit, , the decree-holder, has applied for the sale of ; You are hereby informed.

that the day of

19 has been fixed for settling the terms of the proclamation of sale

GIVEN under my hand and the seal of the Court, this day of

19 .

Judge.

No. 29.

PROCLAMATION OF SALE. (O. 21, r. 66.)

(Title.)

Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of [1] Suit No of 19 , the claim of the decree-holder in the suit [1] men- decided by the of in which tioned in the margin, amounting with costs and was plaintiff and was defendant. interest up to date of sale to the sum of

The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above named as mentioned in the schedule below ; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at o'clock on the at . In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further

*(The First Schedule.—Appendix E.—Execution.)**Conditions of Sale.*

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the buildings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of moveable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immoveable property, the person declared to be purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this  
day of                      19 .

*Judge.*



*(The First Schedule.—Appendix E.—Execution.)**Schedule of Property.*

Number of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value.

---

No. 30.

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE.

(O. 21, r. 66.)

(Title.)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the                      day of                      19   , has been fixed for the sale of the said property,                      copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the Court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the

day of

19 .

*Schedule.*

*Judge.*

(The First Schedule.—Appendix E.—Execution.)

## No. 31.

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A  
RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT. (O. 21,  
r. 71.)

(Title.)

Certified that at the re-sale of the property in execution of the decree in  
the above-named suit, in consequence of default on the part of , pur-  
chaser, there was a deficiency in the price of the said property amounting to  
Rs. , and that the expenses attending such re-sale amounted to  
Rs. , making a total of Rs. , which sum is recoverable  
from the defaulter.

Dated the            day of            19           

*Officer holding the sale.*


---

 No. 32

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN  
EXECUTION. (O. 21, r. 79.)

(Title.)

To

WHEREAS    has become the purchaser at a public sale  
in execution of the decree in the above suit of

now in your possession, you are hereby prohibited from delivering  
possession of the said            to any person except the said            .

GIVEN under my hand and the seal of the Court, this            day

19            .

*Judge.*


---

 No. 33.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY  
OTHER THAN THE PURCHASER. (O. 21, r. 79.)

(Title.)

To

and to

WHEREAS    has become the purchaser at a public  
sale in execution of the decree in the above suit of

*(The First Schedule.—Appendix E.—Execution.)*

being debts  
 due from you to  
 you ; It is ordered that you  
 be, and you are hereby, prohibited from receiving,  
 and you from making payment of, the said debt  
 to any person or persons except the said  
 GIVEN under my hand and the seal of the Court, this  
 day of 19 .

*Judge.*

No. 34.

## PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

(O. 21, r. 79.)

*(Title.)*

To

and , Secretary of  
 Corporation.

WHEREAS has become the purchaser at a public  
 sale in execution of the decree, in the above suit, of certain shares in the  
 above Corporation, that is to say, of standing in the name of you  
 ; It is or-  
 dered that you

be, and you are hereby, prohibited from making any transfer of the  
 said shares to any person except the said , the purchaser afore-  
 said, or from receiving any dividends thereon; and you  
 Secretary of the said Corporation, from  
 permitting any such transfer or making any such payment to any person  
 except the said , the  
 purchaser aforesaid.

Given under my hand and the seal of the Court, this day of

19 .

*Judge.*



(*The First Schedule.—Appendix E.—Execution.*)

application will be heard and determined.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19                      .

*Description of property.*

*Judge.*

---

No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE. (O. 21, rr.  
91, 92. )

(*Title.*)

To

WHEREAS    , the purchaser of the under-  
mentioned property sold on the                      day of  
19                      , in execution of the decree passed in the above-named suit, has  
applied to this Court to set aside the sale of the said property on the ground  
that    the judgment-debtor, had  
no saleable interest therein :

Take notice that if you have any cause to show why the said application  
should not be granted, you should appear with your proofs in this Court on  
the                      day of                      19  
when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this  
day of                      19                      .

*Description of property.*

*Judge.*

---

No. 38.

CERTIFICATE OF SALE OF LAND. (O. 21, r 94.)

(*Title.*)

THIS is to certify that    has been declared the  
purchaser at a sale by public auction on the                      day of  
19                      , of

in execution of decree in this suit, and that the said sale has been duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this                      day of  
19

*Judge.*

---

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN  
EXECUTION. (O. 21, r. 95.)

*(Title.)*

To

The Bailiff of the Court.

WHEREAS    has become  
the certified purchaser of    at a  
sale in execution of decree in suit No.                      of 19                      ; You are hereby  
ordered to put the said    , the certified purchaser,  
as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19                      .

*Judge.*

---

No. 40.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF  
DECREE. (O. 21, r. 97.)

*(Title.)*

To

WHEREAS    , the decree-  
holder in the above suit, has complained to this Court that you have resisted  
(or obstructed) the officer charged with the execution of the warrant for  
possession :

You are hereby summoned to appear in this Court on the  
day of                      19                      at                      A. M., to answer the said  
complaint.

GIVEN under my hand and the seal of the Court, this                      day  
of                      19                      .

*Judge.*

(*The First Schedule.—Appendix E.—Execution.*)

No. 41.

WARRANT OF COMMITTAL. (O. 21, r. 98)

(*Title.*)

To

The officer in charge of the Jail at

WHEREAS the undermentioned property has been decreed to the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [*or* obstructed] and is still resisting [*or* obstructing] the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison ;

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Judge.*

---

No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

(Section 72.

(*Title.*)

To

, Collector of

SIR,

In answer to your communication No. , dated representing that the sale in execution of the decree in this suit of land situate within your district is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

SIR,

Your obedient Servant,

*Judge.*

(The First Schedule — Appendix F.—Supplemental Proceedings)

## APPENDIX F.

## SUPPLEMENTAL PROCEEDINGS

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. 38, r. 1.)

(Title.)

To

The Bailiff of the Court.

WHEREAS

Principal	.			
Interest	.			
Costs	.			
TOTAL		.		

, the plaintiff in the above suit, claims the sum of Rs.

as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant

is about to

These are to command you to demand and receive from the said the

sum of Rs. as sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs. is forthwith delivered to you by or on behalf of the said , to take the said into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs. for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

GIVEN under my hand and the seal of the Court, this  
day of 19 .

Judge.

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT.

(O. 38, r. 2.)

(Title.)

WHEREAS at the instance of , the plaintiff in the above suit,  
, the defendant, has been arrested and brought before the Court ;



*(The First Schedule.—Appendix F.—Supplemental Proceedings.)*

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security :

Therefore I   have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

*Signed.*

Witnesses.

- 1.
- 2.

No. 3.

### SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE.

(O. 38, r. 3.)

(Title.)

To

WHEREAS \_\_\_\_\_, who became surety on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ for your appearance in the above suit, has applied to this Court to be discharged from his obligation :

You are hereby summoned to appear in this Court in person on the \_\_\_\_\_, day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ A.M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this                      day of  
19 .

*Judge.*

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

No. 4.

ORDER FOR COMMITTAL. (O. 33, r. 4.)

(Title.)

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of , the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this                      day  
o                      19 .

*Judge.*

---

No 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE. (O. 38, r. 5.)

(Title.)

To

The Bailiff of the Court.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit ;

These are to command you to call upon the said defendant on or before the                      day of                      19 either to furnish security for the sum of rupees                      to produce and place at the disposal of this Court when required                      or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said                      and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the                      day

*the First Schedule.—Appendix F.—Supplemental Proceedings.*

19 , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and seal of the Court this                      day  
of                      19 .

*Judge.*

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY. (O. 38, r. 5.

*(Title.)*

WHEREAS at the instance of                      , the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs.                      to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed ;

Therefore I                      have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs.                      or such sum not exceeding the said sum as the said Court may adjudge.

*schedule.*

Witness my hand at                      this                      day of                      19 .

*(Signed.)*

Witnesses.

1

2

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

## No. 7.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

(O. 38, r. 6.)

(Title.)

To

The Bailiff of the Court.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do; These are to command you to attach , the property of the said , and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of 19 with an endorsement certifying the date on which and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

## No. 8.

TEMPORARY INJUNCTIONS. (O. 39, r. 1.)

(Title.)

Upon motion made unto this Court by , Pleader of [or Counsel for] the Plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [or the plaint filed in this suit on the day of , or the written statement of the said plaintiff filed on the day of ] and upon hearing the evidence of and in support thereof [if after notice and defendant not appearing : add, and also the evidence of as to service of notice of this motion upon the defendant C. D.] : This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants,

*(The First Schedule.—Appendix F.—Supplemental Proceedings.)*

agents and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned*], being No. 9, Oilmongers Street, Hindupur, in the Taluk of , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this                      day of                      19 .

*Judge.*

*[Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus :—]*

to restrain the defendant                      and  
from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or bill of exchange*] in question, dated on or about the                      , etc., mentioned in the plaintiff's plaint [*or petition*] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

*[In Copyright cases]*                      to restrain the  
defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called                      , or any part thereof, until the, etc.

*[Where part only of a book is to be restrained]*  
to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [*or petition and evidence, etc.*] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled                      and also that part which is entitled                      [*or which is contained in page*  
to page                      both inclusive] until                      , etc.

*[In Patent cases]*                      to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [*or as the case may be*] upon the principle of the inventions in the plaintiff's plaint [*or petition, etc., or written statement, etc.*] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*]

(*The First Schedule.—Appendix F.—Supplemental Proceedings.*)

mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[*In cases of Trade marks*] to restrain the defendant C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or as the case may be*] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [*or petition, etc.*] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

[*To restrain a partner from in any way interfering in 'he business*]

to restrain the defendant C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

---

#### No. 9.

APPOINTMENT OF A RECEIVER. (O. 40, r. 1.)

(*Title.*)

To

WHEREAS                      has been attached in execution of a decree passed in the above suit on the              day of              19              , in favour of              ; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

(The First Schedule.—Appendix F.—Supplemental Proceedings.)

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at the rate of per cent. upon your receipts under the authority of this appointment

GIVEN under my hand and the seal of the Court, this day of 19 .

*Judge.*

---

No 10.

BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3)

(Title.)

KNOW all men by these presents, that we, and and are jointly and severally bound to of the Court of in Rs. to be paid to the said or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 19 .

Whereas a plaint has been filed in this Court by against for the purpose of [*here insert the object of suit*]:

And whereas the said has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said

at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of

*Note.*—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

(The First Schedule.—Appendix G.—*Appeal, Reference and Review.*)

## APPENDIX G.

### APPEAL, REFERENCE AND REVIEW.

#### No. 1.

MEMORANDUM OF APPEAL. (O. 41, r. 1.)

(Title)

The

above-named appeals to the  
Court at from the decree of in suit No. of  
19, dated the day of 19, and sets forth the  
following grounds of objection to the decree appealed from, namely:—

#### No. 2.

SECURITY BOND TO BE GIVEN ON ORDER BEING MADE TO STAY EXECUTION OF  
DECREE. (O. 41, r. 5.)

(Title.)

To

THIS security bond on stay of execution of decree executed by  
witnesseth:—

That, the plaintiff in suit No. of 19, having sued  
, the defendant, in this Court and a decree having been passed on  
the day of 19 in favour of the plaintiff, and the defendant  
having preferred an appeal from the said decree in the Court, the  
said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree,  
the defendant has made an application praying for stay of execution and has  
been called upon to furnish security. Accordingly I, of my own free will,  
stand security to the extent of Rs. , mortgaging the properties  
specified in the schedule hereunto annexed, and covenant that if the decree  
of the first Court be confirmed or varied by the Appellate Court the said  
defendant shall duly act in accordance with the decree of the Appellate Court  
and shall pay whatever may be payable by him thereunder, and if he should  
fail therein then any amount so payable shall be realized from the properties  
hereby mortgaged, and if the proceeds of the sale of the said properties are  
insufficient to pay the amount due, I and my legal representatives will be  
personally liable to pay the balance. To this effect I execute this security  
bond this day of 19

*Schedule.*

Witnessed by

(Signed)

1.

2.



(*The First Schedule.—Appendix G.—Appeal, Reference and Review.*)

## No. 3.

SECURITY BOND TO BE GIVEN DURING THE PENDENCY OF APPEAL. (O. 41,  
r. 6.)  
(*Title.*)

To

THIS security bond on stay of execution of decree executed by  
witnesseth :—

That \_\_\_\_\_, the plaintiff in Suit No. \_\_\_\_\_ of 19 \_\_\_\_\_, having sued  
the defendant, in this Court and a decree having been passed on the  
day of \_\_\_\_\_ 19 \_\_\_\_\_ in favour of the plaintiff, and the defendant having  
preferred an appeal from the said decree in the \_\_\_\_\_ Court, the said  
appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said  
decree and has been called upon to furnish security. Accordingly I, of my  
own free will, stand security to the extent of Rs. \_\_\_\_\_ mortgaging the  
properties specified in the schedule hereunto annexed, and covenant that if  
the decree of the first Court be reversed or varied by the Appellate Court,  
the plaintiff shall restore any property which may be or has been taken in  
execution of the said decree and shall duly act in accordance with the decree  
of the Appellate Court and shall pay whatever may be payable by him  
thereunder, and if he should fail therein then any amount so payable shall  
be realized from the properties hereby mortgaged, and if the proceeds of  
the sale of the said properties are insufficient to pay the amount due, I and  
my legal representatives will be personally liable to pay the balance. To  
this effect I execute this security bond this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

*Schedule.*

Witnessed by

(*Signed*)

1.

2.

---

No. 4.

SECURITY FOR COSTS OF APPEAL (O. 41, r. 10.)

(*Title.*)

To

THIS security bond for costs of appeal executed by \_\_\_\_\_ witnesseth :—

This appellant has preferred an appeal from the decree in Suit No.  
of 19 \_\_\_\_\_, against the respondent, and has been called upon to furnish security.  
Accordingly I, of my own free will, stand security for the costs of t<sup>h</sup>

(The First Schedule.—Appendix G.—Appeal, Reference and Review.)

appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this

day of 19 .

*Schedule.*

Witnessed by

1.

2.

(Signed)

---

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL. (O. 41, r. 13.)

(Title.)

To

You are hereby directed to take notice that , the  
in the above suit, has preferred an appeal to this Court from the decree passed  
by you therein on the day of 19 .

You are requested to send with all practicable despatch all material  
papers in the suit.

Dated the day of 19 .

*Judge.*

---

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

(O. 41, r. 14.)

(Title.)

APPEAL from the of the Court of dated the  
day of 19

To

*Respondent.*

TAKE notice that an appeal from the decree of in this case has  
been presented by and registered in this Court, and that the  
day of 19 has been fixed by this Court  
for the hearing of this appeal.

(*The First Schedule.—Appendix G.—Appeal, Reference and Review.*)

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence. .

GIVEN under my hand and the seal of the Court, this                      day of  
19   .

*Judge.*

[*Note.*—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

---

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED  
BY THE COURT AS A RESPONDENT. (O. 41, r. 20.)

(*Title.*)

To

WHEREAS you were a party in suit No.                      of 19   , in the Court  
of                      , and whereas the                      has preferred an appeal to this  
Court from the decree passed against him in the said suit and it appears to  
this Court that you are interested in the result of the said appeal :

This is to give you notice that this Court has directed you to be made  
a respondent in the said appeal and has adjourned the hearing thereof till  
the                      day of                      19   , at                      A.M. If no appear-  
ance is made on your behalf on the said day and at the said hour the appeal  
will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of  
19   .

*Judge.*

---

No. 8.

MEMORANDUM OF CROSS-OBJECTION. (O. 41, r. 22.)

(*Title.*)

WHEREAS the                      has preferred an appeal to the  
Court at                      from the decree of                      in  
Suit No.                      of 19   , dated the                      day of                      19   ,  
and whereas notice of the day fixed for hearing the appeal was served on  
the                      on the                      day of                      19   , the  
                    files this memorandum of cross objection under rule 22 of Order XLI  
of the Code of Civil Procedure, 1908, and sets forth the following grounds  
of objection to the decree appealed from, namely :—

(The First Schedule.—Appendix G.—Appeal, Reference and Review.

No. 9

DECREE IN APPEAL. (O 41, r 35)

(Title.)

Appeal No.                      of 19                      from the decree of the Court of  
dated the                      day of                      19 .

Memorandum of Appeal.

*Plaintiff.*

*Defendant.*

The                      above-named appeals to the  
Court at                      from the decree of                      in the  
above suit, dated the                      day of                      19 ,  
for the following reasons, namely :—

This appeal coming on for hearing on the                      day of  
19 , before                      , in the presence  
of                      for the appellant and of                      for  
the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs.                      ,  
are to be paid by                      . The costs of the original suit  
are to be paid by                      .

GIVEN under my hand this                      day of  
19 .

*Judge.*

*Costs of Appeal.*

Appellant	Amount.			Respondent.	Amount.		
	Rs.	a.	p.		Rs.	a.	p.
1. Stamp for memorandum of appeal				Stamp for power .			
2 Do for power .				Do for petition .			
3. Service of processes .				Service of processes .			
4. Pleader's fee on Rs .				Pleader's fee on Rs. .			
Total .				Total .			



(*The First Schedule.—Appendix G.—Appeal, Reference and Review.*)

Civil Procedure, 1908, or that it is otherwise a fit one for appeal to His Majesty in Council.

The                      day of                      19   is fixed for you to show cause why the Court should not grant the certificate asked for.

GIVEN under my hand and the seal of the Court, this  
day of                      19   .

*Registrar.*

---

No. 13.

NOTICE TO RESPONDENT OF ADMISSION OF APPEAL TO THE KING IN COUNCIL.

(O. 45, r. 8.)

(*Title.*)

To

WHEREAS                      , the  
                    in the above case, has furnished the security and made the deposit required by Order XLV, rule 7, of the Code of Civil Procedure, 1908 :

Take notice that the appeal of he said                      to His  
Majesty in Council has been admitted on the                      day of  
19   .

GIVEN under my hand and the seal of the Court, this  
day of                      19   .

*Registrar.*

---

No. 14.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED. (O. 47, r.

(*Title.*)

To

TAKE notice that                      has applied to this Court  
for a review of its decree passed on the                      day of  
19                      in the above case. The                      day of  
19                      is fixed for you to show cause why the Court should not grant a  
review of its decree in this case.

GIVEN under my hand and the seal of the Court, this  
day of                      19   .

*Judge.*

(*The First Schedule.—Appendix H.—Miscellaneous.*)

## APPENDIX H. MISCELLANEOUS.

### No. 1.

AGREEMENT OF PARTIES AS TO ISSUES TO BE TRIED. (O. 14, r. 6.)

(*Title.*)

WHEREAS we, the parties in the above suit, are agreed as to the question of fact [*or of law*] to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ and filed as Exhibit \_\_\_\_\_ in the said suit, is or is not beyond the statute of limitation (*or state the point at issue whatever it may be*):

We therefore severally bind ourselves that, upon the finding of the Court in the negative [*or affirmative*] of such issue, \_\_\_\_\_ will pay to the said \_\_\_\_\_ the sum of Rupees \_\_\_\_\_ (*or such sum as the Court shall hold to be due thereon*), and I, the said \_\_\_\_\_, will accept the said sum of Rupees \_\_\_\_\_ (*or such sum as the Court shall hold to be due*) in full satisfaction of my claim on the bond aforesaid [*or that upon such finding I, the said \_\_\_\_\_ will do or abstain from doing, &c., &c.*].

*Plaintiff.*

*Defendant.*

Witnesses.—

1.

2.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

### No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL. (SECTION 24)

In the Court of the District Judge of  
No. \_\_\_\_\_ of 19\_\_\_\_

To

WHEREAS an application, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ has been made to this Court by \_\_\_\_\_ he \_\_\_\_\_ in Suit No. \_\_\_\_\_ of 19\_\_\_\_ now

(The First Schedule.—Appendix H.—Miscellaneous.)

pending in the Court of the \_\_\_\_\_ at \_\_\_\_\_, in which  
 \_\_\_\_\_ is plaintiff and \_\_\_\_\_ is defendant, for  
 the transfer of the suit for trial to the Court of the  
 at \_\_\_\_\_ : —

You are hereby informed that the \_\_\_\_\_ day of  
 19 \_\_\_\_\_ has been fixed for the hearing of the application, when you will be  
 heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this  
 day of \_\_\_\_\_ 19 \_\_\_\_\_ .

*Judge.*

---

No. 3.

NOTICE OF PAYMENT INTO COURT. (O. 24, r. 2.)

(Title.)

TAKE notice that the defendant has paid into Court Rs.  
 \_\_\_\_\_ and says that that sum is sufficient to satisfy the plaintiff's claim  
 in full.

X. Y., *Pleader for the defendant.*

To Z., *Pleader for the plaintiff.*

---

No. 4.

NOTICE TO SHOW CAUSE. (GENERAL FORM.)

(Title)

To

WHEREAS the above-named \_\_\_\_\_  
 has made application to this Court that \_\_\_\_\_ ;

You are hereby warned to appear in this Court in person or by  
 a pleader duly instructed on the \_\_\_\_\_  
 day of \_\_\_\_\_ 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the  
 forenoon, to show cause against the application, failing wherein, the said  
 application will be heard and determined *ex parte*

GIVEN under my hand and the seal of the Court, this  
 day of \_\_\_\_\_ 19 \_\_\_\_\_ .

*Judge.*



(The First Schedule.—Appendix H.—Miscellaneous.)

## No. 5.

LIST OF DOCUMENTS PRODUCED BY  $\frac{\text{PLAINTIFF}}{\text{DEFENDANT}}$ . (O. 13, r. 1.)

(Title.)

No.	Description of document.	Date, if any, which the docu- ment bears.	Signature of party or pleader.
1	2	3	4

## No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION OF A WITNESS ABOUT  
TO LEAVE THE JURISDICTION. (O. 18, r. 16.)

(Title.)

To

*plaintiff (or defendant).*

WHEREAS in the above suit application has been made to the Court  
by that the examination of  
, a witness required by the said , in  
the said suit may be taken immediately ; and it has been shown to the Court's  
satisfaction that the said witness is about to leave the Court's jurisdiction (*or  
any other good and sufficient cause to be stated*) :

TAKE notice that the examination of the said witness  
will be taken by the Court on the day  
of 19 .

Dated the day of 19 .

*Judge.*

## (The First Schedule.—Appendix H.—Miscellaneous.)

## No. 7.

COMMISSION TO EXAMINE ABSENT WITNESS. (O. 26, rr. 4, 18.)

(Title.)

To

WHEREAS the evidence of \_\_\_\_\_ is required by the  
 \_\_\_\_\_ in the above suit; and whereas \_\_\_\_\_ you are  
 requested to take the evidence on interrogatories [*or vivâ voce*] of such  
 witness \_\_\_\_\_, and you are hereby appointed Commis-  
 sioner for that purpose. The evidence will be taken in the presence of  
 the parties or their agents if in attendance, who will be at liberty to ques-  
 tion the witness on the points specified, and you are further requested to make  
 return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any  
 Court having jurisdiction on your application.

A sum of Rs. \_\_\_\_\_, being your fee in the above, is herewith  
 forwarded.

GIVEN under my hand and the seal of the Court, this  
 day of \_\_\_\_\_ 19 \_\_\_\_\_.

Judge.

## No. 8.

LETTER OF REQUEST. (O. 26, r. 5.)

(Title.)

(Heading :—To the President and Judges of, etc., etc., or as the case  
 may be.)

WHEREAS a suit is now pending in the  
 in which *A. B.* is plaintiff and *C. D.* is defendant; And in the said suit the  
 plaintiff claims

(Abstract of claim.)

And whereas it has been represented to the said Court that it is necessary  
 for the purposes of justice and for the due determination of the matters in dis-  
 pute between the parties, that the following persons should be examined as  
 witnesses upon oath touching such matters, that is to say :

*F. F.*, of*G. H.*, of

and

*I. J.*, of

*(The First Schedule.—Appendix H.—Miscellaneous.)*

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I \_\_\_\_\_, as the \_\_\_\_\_ of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said \_\_\_\_\_, or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (*or viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(*Note.*—If the request is directed to a Foreign Court, the words “through His Majesty’s Secretary of State for Foreign Affairs for transmission” should be inserted after the words “other witnesses” in the last line of this form.)

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No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

(O. 26, rr. 9, 11.)

(*Title.*)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for \_\_\_\_\_ should be issued; You are hereby appointed Commissioner for the purpose of \_\_\_\_\_

(The First Schedule.—Appendix H.—Miscellaneous.)

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of

19 .

*Judge.*

— — —  
No. 10.

COMMISSION TO MAKE A PARTITION. (O. 26, r. 13.)

(Title.)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the day of 19 ; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorized to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of

19 .

*Judge*

(*The First Schedule.—Appendix H.—Miscellaneous.*)

No. 11.

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O. 32, r. 3.)

(*Title.*)

To

*Minor Defendant.*

*Natural Guardian.*

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor

(1) Here insert the name defendant, you, the said minor, and you (1)  
of guardian.

, are hereby required to take notice that unless within days from the service upon you of this notice, an application is made to this Court for the appointment of you (1) or of some friend of you, the minor, to act as guardian for the suit; the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the Court, this day of 19 .

*Judge.*

---

No. 12.

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM.

(O. 33, r. 6.)

(*Title.*)

To

WHEREAS has applied to this Court for permission to institute a suit against *in forma pauperis* under Order XXXIII of the Code of Civil Procedure, 1908; and whereas the Court sees no reason to reject the application; and whereas the day of 19 has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof:

(The First Schedule.—Appendix H.—Miscellaneous.)

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the said

day of 19 .

GIVEN under my hand and the seal of the Court, this day of  
19 .

*Judge.*

---

No. 13.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE. (SECTION 145.)

(Title.)

To

WHEREAS you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit; and whereas a decree was passed on the day of 19 against the said defendant for the payment of , and whereas application has been made for execution of the said decree against you :

Take notice that you are hereby required on or before the day of 19 to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this day of  
19 .

*Judge.*



(The First Schedule.—Appendix H.—Miscellaneous.)

No. 15,  
REGISTER OF APPEALS. (O. 41, r. 9.)

COURT (OF HIGH COURT) AT

*Register of Appeals from Decrees in the year 19 .*

[illegible]



## (The Second Schedule.—Arbitration.)

## THE SECOND SCHEDULE.

## ARBITRATION.

*Arbitration in Suits.*

Parties to  
suit may ap-  
ply for order  
of reference.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

Appointment  
of arbitrator

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Order of  
reference.

3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

Where refer-  
ence is to two  
or more, or  
order to provide  
for difference  
of opinion.

4. (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

- (a) by the appointment of an umpire; or
- (b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or
- (c) by empowering the arbitrators to appoint an umpire; or
- (d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

Power of  
Court to ap-  
point arbitra-  
tor in certain  
cases.

5. (1) In any of the following cases, namely :—

- (a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or
- (b) where an arbitrator or umpire—
  - (i) dies, or
  - (ii) refuses or neglects to act or becomes incapable of acting, or
  - (iii) leaves British India in circumstances showing that he will probably not return at an early date, or

*(The Second Schedule.—Arbitration.)*

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the suit.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

Powers of arbitrator or umpire appointed under paragraph 4 or 5.

7. (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

Summoning witnesses and default.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period ; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Extension of time for making award.

9. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

Where umpire may arbitrate in lieu of arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them ; and notice of the filing shall be given to the parties.

Award to be signed and filed.

## (The Second Schedule.—Arbitration.)

Statement of  
special case  
by arbitrators  
or umpire.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to mo-  
dify or cor-  
rect award.

12. The Court may, by order, modify or correct an award,—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred ;  
or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision ; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Order as to  
costs of arbi-  
tration.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award  
or matter  
referred to  
arbitration  
may be remit-  
ted.

14. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred ;
- (b) where the award is so indefinite as to be incapable of execution ;
- (c) where an objection to the legality of the award is apparent upon the face of it.

Grounds for  
setting aside  
award.

15. (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, namely :—

- (a) corruption or misconduct of the arbitrator or umpire ;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

16. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

Judgment  
to be accord-  
ing to award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

*Order of reference on agreements to refer.*

17. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

Application  
to file in  
Court agree-  
ment to refer  
to arbitration.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to Court to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agree-

Stay of suit  
where there  
is an agree-  
ment to refe-  
re to arbitration.

*(The Second Schedule.—Arbitration.)*

ment to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under paragraph 17.

19. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon.

*Arbitration without the intervention of a Court.*

Filing award in matter referred to arbitration without intervention of Court.

20. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Filing and enforcement of such award.

21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

Exclusion of certain words in the Specific Relief Act, 1877.  
Forms.

22. The last thirty-seven words of section 21 of the <sup>1</sup> Specific Relief Act, 1877, shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply.

23. The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

**APPENDIX.**

## No. 1.

## APPLICATION FOR AN ORDER OF REFERENCE.

*(Title of suit.)*

1. This suit is instituted for *(state nature of claim)*.

---

<sup>1</sup> Genl. Acts, Vol. II.

2. The matter in difference between the parties is (*state matter of difference*).

3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.

4. The applicants therefore apply for an order of reference.

*A. B.*

*C. D.*

Dated the       day of                  19 .

NOTE.—If the parties are agreed as to the arbitrators, it should be so stated.

No. 2.

### ORDER OF REFERENCE.

*Title of suit.*

UPON reading the application presented on the  
day of

19

it is ordered that the following matter in difference arising in this suit,  
namely :—

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the day of 19, and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

GIVEN under my hand and the seal of the Court, this day of  
19 .

*Judge.*

No. 3.

### ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

(Title of suit.)

WHEREAS by an order, dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
[state order of reference and death, refusal, etc., of arbitrator], it is by

(*The Second Schedule.—Arbitration.*)

consent ordered that Z be appointed in the place of X (deceased, *or as the case may be*) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the            day of            19    .

GIVEN under my hand and the seal of the Court, this            day  
of            19    .

*Judge.*

\_\_\_\_\_  
No. 4.

SPECIAL CASE.

(*Title of suit.*)

In the matter of an arbitration between A. B. of  
and C. D.

of            , the following special case is stated for the opinion of the  
Court :—

[*Here state the facts concisely in numbered paragraphs.*]

The questions of law for the opinion of the Court are :—

First, whether \_\_\_\_\_

\_\_\_\_\_  
Secondly, whether \_\_\_\_\_

X.  
Y.

Dated the            day of            19    .

\_\_\_\_\_  
No. 5.

AWARD.

(*Title of suit.*)

In the matter of an arbitration between A. B. of            and C. D.  
of            ;—

*(The Second Schedule.—Arbitration)*

WHEREAS in pursuance of an order of reference made by the Court  
of \_\_\_\_\_ and dated the \_\_\_\_\_ day of  
19 \_\_\_\_\_ the following matter in difference between *A. B.* and *C. D.*, namely,

\_\_\_\_\_ has been referred to us for determination ;

Now we, having duly considered the matter referred to us, do hereby make  
our award as follows :—

We award—

(1) that \_\_\_\_\_

(2) that \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

X.

Y.

\_\_\_\_\_



*(The Third Schedule.—Execution of Decrees by Collectors.)***THE THIRD SCHEDULE.****EXECUTION OF DECREES BY COLLECTORS.**

Powers of  
Collector.

1. Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree ; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

Procedure of  
Collector in  
special cases.

2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be  
given to de-  
cree-holders  
and to per-  
sons having  
claims on  
property.

3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder ;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector think fit ; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

*(The Third Schedule.—Execution of Decrees by Collectors.)*

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

Where District Court may issue notices and hold inquiry.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Effect of decision of Court as to dispute.

7. (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

Scheme for liquidation of decrees for payment of money.

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or,

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at

*(The Third Schedule.—Execution of Decrees by Collectors.)*

such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—

- (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or
- (ii) by mortgaging the whole or any part of such property ; or
- (iii) by selling part of such property ; or
- (iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or
- (v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Local Government

Recovery of  
balance (if  
any) after  
letting or  
management.

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property ; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

*(The Third Schedule.—Execution of Decrees by Collectors.)*

9. (1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

Collector to  
render  
accounts to  
Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and
- (b) Where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2—
  - (i) in keeping down the interest on incumbrances on the property;
  - (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
  - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

Sales how  
to be con-  
ducted.

- (a) fix a reasonable reserved price for each lot;
- (b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property;

*(The Third Schedule —Execution of Decrees by Collectors.)*

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

Restrictions  
as to aliena-  
tion by judg-  
ment-debtor  
or his repre-  
sentative,  
and prosecu-  
tion of reme-  
dies by decree-  
holders.

11. (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

Provision  
where pro-  
perty is in  
several dis-  
tricts.

12 Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

Powers of  
Collector to  
compel at-  
tendance and  
production.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

(The Fourth Schedule.—Enactments amended.)

## THE FOURTH SCHEDULE.

(See section 155.)

## ENACTMENTS AMENDED.

1	2	3	4
Year.	No.	Short title.	Amendment.
1870	VII	The Court-fees Act, 1870 .	<p>In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted.</p> <p>From article 11 of Schedule II the words "from an order rejecting a plaint or" shall be omitted.</p> <p>For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely:—</p> <p>"Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908."</p>

(The Fifth Schedule.—Enactments repealed.)

## THE FIFTH SCHEDULE.

(See section 156.)

## ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>			
1870	VII	The Court-fees Act, 1870 . . .	Section 16, and article 15 of Schedule II.
1882	IV	The Transfer of Property Act, 1882	Sections 85 to 90 inclusive, 92 to 94 inclusive, 96, 97, 99 and in section 100 the words "and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property."
"	XIV	The Code of Civil Procedure . .	The whole Act.
"	XV	The Presidency Small Cause Courts Act, 1882.	The last paragraph of section 3.
1888	VI	The Debtors Act, 1888 . . .	Sections 2 to 8.
"	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed, except section 1, section 65 and section 66, sub-sections (1), (3) and (4).
"	X	The Presidency Small Cause Courts Law Amendment Act, 1888.	So much as is unrepealed.
1890	VIII	The Guardian and Ward Act, 1890.	Section 53.
1891	XII	The Repealing and Amending Act, 1891	So much as relates to Act XIV of 1882 and Act VII of 1883.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and preamble the words "and the Code of Civil Procedure" and sections 2, 3 and 4.
1894	V	The Civil Procedure Code Amendment Act, 1894.	The whole Act
1895	VII	The Punjab Laws Act Amendment Act, 1895.	Sections 1 and 2.
"	XIII	The Civil Procedure Code Amendment Act, 1895.	The whole Act.
1900	VI	The Lower Burma Courts Act, 1900.	So much of the schedules as relate to Act XIV of 1882.

ACT No. VI OF 1908.<sup>1</sup>

[8th June, 1908.]

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances ; It is hereby enacted as follows :—

1. (1) This Act may be called the Explosive Substances Act, 1908.

Short title,  
extent and  
application.

(2) It extends to the whole of British India and applies also to—

(a) all native Indian subjects of His Majesty in any place without and beyond British India ;

(b) all other British subjects within the territories of any native prince or chief in India.

2. In this Act the expression “explosive substance” shall be deemed to include any materials for making any explosive substance ; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance ; also any part of any such apparatus, machine or implement.

Definition of  
“explosive  
substance.”

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

Punishment  
for causing  
explosion  
likely to  
endanger life  
or property.

4. Any person who unlawfully and maliciously—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property ; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India ;

Punishment  
for attempt  
to cause ex-  
plosion, or  
for making  
or keeping  
explosive  
with intent  
to endanger  
life or  
property.

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. IV, p. 170, and for Proceedings in Council, see *ibid*, 1908, Pt. VI, p. 128.



may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

Punishment  
for making  
or possessing  
explosives  
under sus-  
picious cir-  
cumstances.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

Punishment  
of abettors.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Restriction  
on trial of  
offences.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Local Government or the Governor General in Council.

### ACT No. VII OF 1908.<sup>1</sup>

[*8th June, 1908.*]

An Act for the prevention of incitements to murder and to other offences in newspapers.

WHEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; It is hereby enacted as follows :—

Short title  
and extent.

1. (1) This Act may be called the Newspapers (Incitements to Offences) Act, 1908.

(2) It extends to the whole of British India.

Definitions

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) “Magistrate” means a District Magistrate or Chief Presidency Magistrate :

(b) “newspaper” means any periodical work containing public news or comments on public news :

<sup>1</sup>For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. IV, p. 172, and for Proceedings in Council, *see ibid.*, 1908, Pt. VI, p. 132.

(c) "printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

V of 1898. (2) Save as herein otherwise provided all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the <sup>1</sup>Code of Criminal Procedure, 1898.

VI of 1908. 3. (1) In cases where, upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement to murder or to any offence under the <sup>2</sup>Explosive Substances Act, 1908, or to any act of violence, such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

Power to  
forfeit  
printing  
presses in  
certain case .

XXV of 1867. (2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under section 5 of the <sup>3</sup>Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

V of 1898. (4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the <sup>1</sup>Code of Criminal Procedure, 1898.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

<sup>1</sup> Genl. Acts, Vol. V.

<sup>2</sup> *Supra*.

<sup>3</sup> Genl. Acts, Vol. I.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.

Power to  
seize.

4. (1) The Magistrate may by warrant empower any Police-officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

(a) where the newspaper specified in such warrant is printed or published, or

(b) where any such property may be or may be reasonably suspected to be, or

(c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search-warrants by the <sup>1</sup>Code of Criminal Procedure, 1898.

V of 1898.

Appeal.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute

Bar of other  
proceedings.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

Power to  
annul  
declaration  
under Press  
and  
Registration  
of Books  
Act, 1867.

7. Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the <sup>2</sup>Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper, which is the same in substance as the said newspaper, until such prohibition be withdrawn.

XXV of 1867.

Penalty.

8. Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the <sup>2</sup>Press and Registration of Books Act, 1867.

XXV of 1867.

Application  
of Code of  
Criminal  
Procedure.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the <sup>1</sup>Code of Criminal Procedure, 1898.

V of 1898.

<sup>1</sup> Genl. Acts, Vol. V.

<sup>2</sup> Genl. Acts, Vol. I.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.

Operation  
of other  
laws not  
barred.

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ACT NO. VIII OF 1908.<sup>1</sup>

[10th July, 1908.]

An Act to amend the Local Authorities Loan Act, 1904.

III of 1904.

WHEREAS it is expedient to amend the <sup>2</sup>Local Authorities Loan Act, 1904; It is hereby enacted as follows:—

1. This Act may be called the Local Authorities Loan (Amendment) Act, 1908.

2. In section 2 of the Local Authorities Loan Act, 1904, for the words “bills repayable” the words “bills or promissory notes payable” shall be substituted; and in the proviso to the same section, after the word “bills” the words “or promissory notes” shall be inserted.

Amendment  
of section 2,  
Act III,  
1904.

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<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 281, and for Proceedings in Council, see *ibid*, 1908, Pt. VI, pp. 128 and 141.

<sup>2</sup> *Supra*.

## THE INDIAN LIMITATION ACT, 1908.

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ACT No. IX OF 1908<sup>1</sup>.

[7th August, 1908.]

An Act to consolidate and amend the law for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property; It is hereby enacted as follows:—

## PART I.

## PRELIMINARY.

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Indian Limitation Act, 1908.

(2) It extends to the whole of British India; and

(3) This section and section 31 shall come into force at once. The rest of this Act shall come into force on the first day of January, 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “applicant” includes any person from or through whom an applicant derives his right to apply :

(2) “bill of exchange” includes a hundi and a cheque :

(3) “bond” includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be :

(4) “defendant” includes any person from or through whom a defendant derives his liability to be sued :

(5) “easement” includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another :

(6) “foreign country” means any country other than British India :

(7) “good faith”: nothing shall be deemed to be done in good faith which is not done with due care and attention :

(8) “plaintiff” includes any person from or through whom a plaintiff derives his right to sue :

(9) “promissory note” means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight :

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 22; for Report of Select Committee, see *ibid.*, 1908, Pt. V, p. 223, and for Proceedings in Council, see *ibid.*, 1908, Pt. VI, pp. 2, 13, 37 and 145.

(Part II.—*Limitation of Suits, Appeals and Applications.*)

(10) “suit” does not include an appeal or an application : and

(11) “trustee” does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title.

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## PART II.

### LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

3. Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence

Dismissal of suits, etc., instituted, etc., after period of limitation.

*Explanation.*—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer ; in the case of a pauper, when his application for leave to sue as a pauper is made ; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

4 Where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

Where Court is closed when period expires.

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Extension of period in certain cases.

*Explanation.*—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

Legal disability.



*(Part II.—Limitation of Suits, Appeals and Application.)*

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.

*Illustrations.*

- (a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accrual. He may institute his suit at any time within three years from the date of his attaining majority.
- (b) A right to sue accrues to Z during his minority. After the accrual, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.
- (c) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

Disability  
of one of  
several  
plaintiffs or  
applicants.

7. Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all : but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

*Illustrations.*

- (a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.
- (b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

Special  
exceptions.

8. Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

(Part II.—*Limitation of Suits, Appeals and Applications.* Part III.—*Computation of Period of Limitation.*

*Illustrations.*

- (a) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accrual. A has, under the ordinary law, only one year remaining within which to sue. But under section 6 and this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.
- (b) A right to sue for an hereditary office accrues to A who at the time is insane. Six years after the accrual A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under section 6 read with this section.
- (c) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accrual, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. Section 6 read with this section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

9. Where once time has begun to run, no subsequent disability or inability to sue stops it : Continuous running of time.

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Suits against express trustees and their representatives.

11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act. Suits on foreign contracts.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

## PART III.

### COMPUTATION OF PERIOD OF LIMITATION.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. Exclusion of time in legal proceedings.

(Part III.—*Computation of Period of Limitation.*)

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of time of defendant's absence from British India and certain other territories.  
Exclusion of time of proceeding *bonâ fide* in Court without jurisdiction.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

*Explanation I.*—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

*Explanation II.*—For the purposes of this section, a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

*Explanation III.*—For the purposes of this section misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

*(Part III.—Computation of Period of Limitation.)*

15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion of time during which proceedings are suspended.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

Exclusion of time during which proceedings to set aside execution-sale are pending.

17. (1) Where a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

Effect of fraud.

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed docu-

## (Part III.—Computation of Period of Limitation.)

ment, when he first had the means of producing it or compelling its production.

Effect of acknowledgment in writing.

19. (1) Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but, subject to the provisions of the <sup>1</sup>Indian Evidence Act, 1872, oral evidence of its contents shall not be received. 1 of 1872.

*Explanation I.*—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

*Explanation II.*—For the purposes of this section, “signed” means signed either personally or by an agent duly authorized in this behalf.

*Explanation III.*—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

Effect of payment of interest as such or of part payment of principal.

20. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same.

Effect of receipt of produce of mortgaged land.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the purpose of sub-section (1).

*(Part III.—Computation of Period of Limitation.)*

*Explanation.*—Debt includes money payable under a decree or order of Court.

21. (1) The expression “agent duly authorized in this behalf,” in sections 19 and 20, shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

Agent of person under disability.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, or by the agent of, any other or others of them.

Acknowledgment or payment by one of several joint contractors, etc.

22. (1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

Effect of substituting or adding new plaintiff or defendant.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

23 In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

24 In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

*Illustration.*

A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

*Illustrations.*

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiration of four months after date computed according to the Gregorian calendar.

*(Part IV.—Acquisition of Ownership by Possession.)*

- (b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiration of one year after date computed according to the Gregorian calendar.

## PART IV.

## ACQUISITION OF OWNERSHIP BY POSSESSION.

Acquisition  
of right to  
easements.

26. (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

(2) Where the property over which a right is claimed under sub-section (1) belongs to Government, that sub-section shall be read as if for the words "twenty years" the words "sixty years" were substituted.

*Explanation.*—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

*Illustrations.*

- (a) A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890 to 1st January 1910. The plaintiff is entitled to judgment.

(Part IV.—Acquisition of Ownership by Possession. Part V.—  
Savings and Repeals.)

- (b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

27. Where any land or water upon, over from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land or water.

Exclusion in favour of reversioner of servient tenement.

*Illustration.*

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years ; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Extinguishment of right to property.

## PART V.

### SAVINGS AND REPEALS.

29. (1) Nothing in this Act shall—

IX of 1872.

(a) affect the Indian Contract Act, 1872, section 25 :

(b) affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India.

I V of 1862.

(2) Nothing in this Act shall apply to suits under the<sup>2</sup>Indian Divorce

<sup>1</sup> Genl. Acts, Vol. II.

<sup>2</sup> Genl. Acts, Vol. I.



*(Part F.—Savings and Repeals.)*

(3) Sections 26 and 27 and the definition of "easement" in section 2 V of 1882, shall not apply to cases arising in territories to which the <sup>1</sup>Indian Easements Act, 1882, may for the time being extend.

Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act, 1877.

30. Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877, may be instituted XV of 1877. within the period of two years next after the passing of this Act, or within the period prescribed for such suit by the Indian Limitation Act, 1877, whichever period expires first.

Provision for suits by certain mortgagees in territories mentioned in the second schedule

§ 31. (1) Notwithstanding anything contained in this Act or in the Indian Limitation Act, 1877, in the territories mentioned in the second schedule a XV of 1877. suit for foreclosure or a suit for sale by a mortgagee may be instituted within two years from the date of the passing of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit in the said territories instituted within the said period of sixty years and pending at the date of the passing of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that a twelve years' rule of limitation is applicable.

(2) Where in the aforesaid territories the claim of a mortgagee for foreclosure or for sale has been wholly or in part dismissed or withdrawn after the twenty-second day of July 1877 and before the passing of this Act, either in a Court of first instance or of appeal on the ground that a twelve years' rule of limitation applied to such claim, the case may be restored on an application in writing to the Court by which the claim was dismissed or in which it was withdrawn, provided the application is made within six months from the date of the passing of this Act: and on such restoration, the provisions of sub-section (1) shall apply.

Repeals.

32 The enactments mentioned in the third schedule are repealed to the extent specified in the fourth column thereof.

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<sup>1</sup> Mad. Code ; Bom. Code ; U. P. Code ; C. P. Code ; Coorg Code

(The First Schedule.—First Division: Suits.)

## THE FIRST SCHEDULE.

(See section 3.)

## FIRST DIVISION : SUITS.

	Description of suit.	Period of limitation.	Time from which period begins to run.
		<i>Part I.—Thirty days.</i>	
XXIII of 1863.	1.—To contest an award of the Board of Revenue under the <sup>1</sup> Waste Lands (Claims) Act, 1863.	Thirty days . . .	When notice of the award is delivered to the plaintiff.
		<i>Part II.—Ninety days.</i>	
	2.—For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days . . .	When the act or omission takes place.
		<i>Part III.—Six months.</i>	
I of 1877.	3.—Under the <sup>2</sup> Specific Relief Act, 1877, section 9, to recover possession of immoveable property.	Six months . . .	When the dispossession occurs.
XI of 1860.	4.—Under the <sup>3</sup> Employers and Workmen (Disputes) Act, 1860, section 1.	Ditto . . .	When the wages, hire or price of work claimed accrue or accrues due.
V of 1908.	5.—Under the summary procedure referred to in section 128 (2) (f) of the <sup>4</sup> Code of Civil Procedure, 1908.	Ditto . . .	When the debt or liquidated demand becomes payable or when the property becomes recoverable.
		<i>Part IV.—One year.</i>	
	6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year . . .	When the penalty or forfeiture is incurred.
	7.—For the wages of a household servant, artisan or labourer not provided for by this schedule, article 4.	Ditto . . .	When the wages accrue due.
	8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house	Ditto . . .	When the food or drink is delivered.

<sup>1</sup> Genl. Acts, Vol. I.<sup>2</sup> Genl. Acts, Vol. II.<sup>3</sup> Genl. Acts, Vol. I.<sup>4</sup> *Supra.*

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.—One year—contd.</i>	
9.—For the price of lodging . . .	One year . . .	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto . . .	When the purchaser takes, under the sale sought to be impeached; physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person, against whom any of the following orders has been made to establish the right which he claims to the property comprised in the order :	Ditto . . .	The date of the order
(1) Order under the Code of <sup>1</sup> Civil Procedure, 1908, on a claim preferred to, or an objection made to the attachment of, property attached in execution of a decree ;		V of 1908 .
(2) Order under section 28 of the <sup>2</sup> Presidency Small Cause Courts Act, 1882.		XV of 1882.
11A.—By a person against whom an order has been made under the <sup>1</sup> Code of Civil Procedure, 1908, upon an application by the holder of a decree for the possession of immoveable property or by the purchaser of such property sold in execution of a decree, complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in the delivery of possession thereof to the decree-holder or purchaser, to establish the right which he claims to the present possession of the property comprised in the order.	Ditto . . .	Ditto

<sup>1</sup> *Supra.*<sup>2</sup> Genl. Acts, Vol. III.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part IV.—One year—contd.</i>		
12.—To set aside any of the following sales :—  (a) sale in execution of a decree of a Civil Court ;  (b) sale in pursuance of a decree or order of a Collector or other officer of revenue ;  (c) sale for arrears of Government revenue, or for any demand recoverable as such arrears ;  (d) sale of a patni taluq sold for current arrears of rent <i>Explanation</i> — In this article “patni” includes any intermediate tenure saleable for current arrears of rent	One year                      ...	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto                      .                      .	The date of the final decision or order in the case by a Court competent to determine it finally.
14. To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	Ditto .                      .                      .	The date of the act or order.
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue-authorities for arrears of Government revenue.	Ditto .                      .                      .	When the attachment, lease or transfer is made.
16 —Against Government to recover money paid under protest in satisfaction of a claim made by the revenue-authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto .                      .                      .	When the payment is made.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*cont d.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part IV.—One year—contd.</i>		
17.—Against Government for compensation for land acquired for public purposes.	One year . . .	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto . . .	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto . . .	When the imprisonment ends.
20.—By executors, administrators or representatives under the 'Legal Representatives' Suits Act, 1855.	Ditto . . .	The date of the death of the person wronged. XII of 1855.
21.—By executors, administrators or representatives under the <sup>2</sup> Indian Fatal Accidents Act, 1855.	Ditto . . .	The date of the death of the person killed. XIII of 1855.
22.—For compensation for any other injury to the person.	Ditto ... ..	When the injury is committed.
23.—For compensation for a malicious prosecution.	Ditto ... ..	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel ...	Ditto ... ..	When the libel is published.
25.—For compensation for slander ..	Ditto ... ..	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto ... ..	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto ... ..	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	Ditto ... ..	The date of the distress.

<sup>1</sup> Gen. Acts, Vol. I.<sup>2</sup> Gen. Acts, Vol. I.

(The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Descript on of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part II—One year—concl'd</i>	
29.—For compensation for wrongful seizure of moveable property under legal process.	One year ..	The date of the seizure.
30.—Against a carrier for compensation for losing or injuring goods.	Ditto ...	When the loss or injury occurs.
31.—Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	Ditto ...	When the goods ought to be delivered.
	<i>Part V—Two years</i>	
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years ...	When the perversion first becomes known to the person injured thereby.
XII of 1855. 33.—Under the Legal Representatives' Suits Act, 1855, against an executor.	Ditto ..	When the wrong complained of is done.
34.—Under the same Act against an administrator.	Ditto ...	Ditto
35.—Under the same Act against any other representative.	Ditto ..	Ditto
36.—For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for.	Ditto ...	When the malfeasance, misfeasance or nonfeasance takes place.
	<i>Part VI.—Three years.</i>	
37.—For compensation for obstructing a way or a watercourse	Three years ...	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Ditto ...	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto ...	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto ...	The date of the infringement.

<sup>1</sup> Genl. Acts, Vol. I.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
41.—To restrain waste ..	Three years ...	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto ...	When the injunction ceases.
43.—Under the <sup>1</sup> Indian Succession Act, 1865, section 320 or section 321, or under the <sup>2</sup> Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto ...	The date of the payment or distribution. X of 1865. V of 1881.
44.—By a ward who has attained majority, to set aside a transfer of property by his guardian.	Ditto ..	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code :—  The <sup>3</sup> Bengal Land-revenue Settlement Regulation, 1822.  The <sup>3</sup> Bengal Land-revenue Settlement Regulation, 1825 <sup>3</sup>  The <sup>3</sup> Bengal Land-revenue (Settlement and Deputy Collectors) Regulation, 1833.	Ditto .	The date of the final award or order in the case.  VII of 1822.  IX of 1825.  IX of 1833
46.—By a party bound by such award to recover any property comprised therein.	Ditto ...	The date of the final award or order in the case.

<sup>1</sup> Genl. Acts, Vol. I.<sup>2</sup> Genl. Acts, Vol. III.<sup>3</sup> Ben Code.

(The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run
<i>Part VI.—Three years—contd.</i>		
47.—By any person bound by an order respecting the possession of immoveable property made under the <sup>1</sup> Code of Criminal Procedure, 1898, or the <sup>2</sup> Mamlatdars' Courts Act, 1906, or by any one claiming under such person, to recover the property comprised in such order	Three years . .	The date of the final order in the case.
48.—For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto . .	When the person having the right to the possession of the property first learns in whose possession it is
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same	Ditto . .	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture	Ditto . .	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered	Ditto . .	When the goods ought to be delivered.
<sup>3</sup> 52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Ditto . .	The date of delivery of the goods.
<sup>3</sup> 53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto . .	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange no such bill being given.	Ditto . .	When the period of the proposed bill elapses.

<sup>1</sup> Genl Acts, Vol. V.<sup>2</sup> Bom. Code.<sup>3</sup> For period of limitation for these and certain other suits in the province of the Punjab, see the Punjab Loans Limitation Act, 1904 (Punj. Act I of 1904) and s 29 (1) (b) of this Act.



(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI—Three years—contd.</i>		
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Three years . .	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto . .	When the work is done.
57.—For money payable for money lent.	Ditto . .	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto . .	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto . .	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable.	Ditto . .	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto . .	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto . .	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff	Ditto . .	When the interest becomes due.
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Ditto . .	When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

<sup>1</sup> See footnote under art. 52, *supra*.

## (The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—contd.</i>		
165.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Three years	When the time specified arrives or the contingency happens.
166.—On a single bond, where a day is specified for payment.	Ditto	The day so specified.
167.—On a single bond, where no such day is specified	Ditto	The date of executing the bond.
168.—On a bond subject to a condition.	Ditto	When the condition is broken.
169.—On a bill of exchange or promissory note payable at a fixed time after date	Ditto	When the bill or note falls due.
170.—On a bill of exchange payable at sight or after sight, but not at a fixed time.	Ditto	When the bill is presented.
171.—On a bill of exchange accepted payable at a particular place.	Ditto	When the bill is presented at that place.
172.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto	When the fixed time expires.
173.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto	The date of the bill or note.
174.—On a promissory note or bond payable by instalments.	Ditto	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.
175.—On a promissory note or bond payable by instalments, which provides that if default be made in payment of one or more instalments, the whole shall be due.	Ditto	When the default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.

<sup>1</sup> See footnote under art. 52, *supra*.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
176.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Three years . . .	The date of the delivery to the payee.
177.—On a dishonoured foreign bill where protest has been made and notice given.	Ditto . . .	When the notice is given.
178.—By the payee against the drawer of a bill of exchange which has been dishonoured by non-acceptance.	Ditto . . .	The date of the refusal to accept.
179.—By the acceptor of an accommodation-bill against the drawer.	Ditto . . .	When the acceptor pays the amount of the bill.
180.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto . . .	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto . . .	When the surety pays the creditor.
82.—By a surety against a co-surety	Ditto . . .	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto . . .	When the plaintiff is actually damaged.
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Ditto . . .	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Ditto . . .	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account

<sup>1</sup> See footnote under art. 52, *supra*.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Three years . . .	When proof of the death or loss is given or received to or by the insurer, whether by or from the plaintiff, or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto . . .	When the insurers elect to avoid the policy
88.—Against a factor for an account.	Ditto . . .	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto . . .	Ditto.
90.—Other suits by principals against agents for neglect or misconduct	Ditto . . .	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto . . .	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92.—To declare the forgery of an instrument issued or registered.	Ditto . . .	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto . . .	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto . . .	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto . . .	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake	Ditto . . .	When the mistake becomes known to the plaintiff.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI—Three years—contd.</i>	
97.—For money paid upon an existing consideration which afterwards fails.	Three years . .	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto . .	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss
99.—For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his co-sharers	Ditto . .	The date of the payment in excess of the plaintiff's own share
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution	Ditto . .	When the right to contribution accrues.
101.—For a seaman's wages ..	Ditto . .	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto . .	When the wages accrue due.
103.—By a Muhammadan for exigible dower ( <i>mu'ajjal</i> ).	Ditto . .	When the dower is demanded and refused or (where, during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.
104.—By a Muhammadan for deferred dower ( <i>mu' waajjal</i> ).	Ditto . .	When the marriage is dissolved by death or divorce
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto . .	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto . .	The date of dissolution.

(The First Schedule.—First Division: Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION: SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI—Three years—concl'd.</i>		
107 —By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate	Three years . .	The date of the payment
108 —By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease	Ditto . .	When the trees are cut down.
109 —For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant	Ditto . .	When the profits are received.
110 —For arrears of rent ..	Ditto . .	When the arrears become due
111 —By a vendor of immoveable property for personal payment of unpaid purchase-money.	Ditto . .	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance
112.—For a call by a company registered under any Statute or Act	Ditto . .	When the call is payable.
113 —For specific performance of a contract	Ditto . .	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114 —For the rescission of a contract.	Ditto . .	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115 —For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Ditto . .	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
<i>Part VII.—Six years.</i>		
116.—For compensation for the breach of a contract in writing registered.	Six years . .	When the period of limitation would begin to run against a suit brought on a similar contract not registered.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE —*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VII—Six years—concl'd.</i>	
117.—Upon a foreign judgment as defined in the <sup>1</sup> Code of Civil Procedure, 1908	Six years . . .	The date of the judgment V of 1908.
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Ditto . . .	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid	Ditto . . .	When the rights of the adopted son, as such, are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto . . .	When the right to sue accrues
	<i>Part VIII.—Twelve years.</i>	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluk or other saleable tenure sold for arrears of rent.	Twelve years . . .	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in British India, or a recognisance.	Ditto . . .	The date of the judgment or recognisance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto . . .	When the legacy or share becomes payable or deliverable
124.—For possession of an hereditary office	Ditto . . .	When the defendant takes possession of the office adversely to the plaintiff
		<i>Explanation</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.

<sup>1</sup> *Supra*

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run
<i>Part VIII.—Twelve years—contd.</i>		
125.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her re-marriage	Twelve years . .	The date of the alienation.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Ditto . .	When the alienee takes possession of the property.
127.—By a person excluded from joint family property to enforce a right to share therein.	Ditto . .	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Ditto . .	When the arrears are payable.
129.—By a Hindu for a declaration of his right to maintenance.	Ditto . .	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Ditto . .	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Ditto . .	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Ditto . .	When the money sued for becomes due.
<i>Explanation.</i> —The allowance and fees respectively called <i>malikana</i> and <i>haggs</i> shall, for the purpose of this article, be deemed to be money charged upon immoveable property.		



(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit	Period of limitation.	Time from which period begins to run.
	<i>Part VIII.—Twelve years—contd.</i>	
133—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, deposi- tary or pawnee for a valu- able consideration.	Twelve years . .	The date of the purchase.
134.—To recover possession of immoveable property con- veyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable considera- tion.	Ditto . .	The date of the transfer.
135 —Suit instituted in a Court not established by Royal Charter by a mortgagee for posses- sion of immoveable prop- erty mortgaged.	Ditto . .	When the mortgagor's right to pos- session determines.
136—By a purchaser at a private sale for possession of im- moveable property sold when the vendor was out of possession at the date of the sale.	Ditto . .	When the vendor is first entitled to possession.
137—Like suit by a purchaser at a sale in execution of a de- cree, when the judgment- debtor was out of possession at the date of the sale.	Ditto . .	When the judgment-debtor is first entitled to possession.
138—Like suit by a purchaser at a sale in execution of a de- cree, when the judgment- debtor was in possession at the date of the sale.	Ditto . .	The date when the sale becomes absolute.
139— By a landlord to recover pos- session from a tenant.	Ditto . .	When the tenancy is determined.
140— By a remainderman, a rever- sioner (other than a land- lord) or a devisee, for pos- session of immoveable prop- erty.	Ditto . .	When his estate falls into posses- sion.

(The First Schedule.—First Division : Suits.)

THE FIRST SCHEDULE—*contd.*FIRST DIVISION : SUITS—*contd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VIII.—Twelve years—concl'd.</i>		
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female	Twelve years . . .	When the female dies.
142.—For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto . . .	The date of the dispossession or discontinuance.
143.—Likesuit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto . . .	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto . . .	When the possession of the defendant becomes adverse to the plaintiff.
<i>Part IX.—Thirty years.</i>		
145.—Against a depositary or pawnnee to recover moveable property deposited or pawned.	Thirty years . . .	The date of the deposit or pawn.
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Ditto . . .	When any part of the principal or interest was last paid on account of the mortgage-debt.
146A.—By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Ditto . . .	The date of the dispossession or discontinuance.

(The First Schedule.—First Division : Suits. Second Division : Appeals.)

THE FIRST SCHEDULE—*contd.*

FIRST DIVISION : SUITS—*concl'd.*

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part X.—Sixty years.</i>	
147.—By a mortgagee for foreclosure or sale.	Sixty years . .	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto . .	When the right to redeem or to recover possession accrues : Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May 1863 shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto . .	When the period of limitation would begin to run under this Act against a like suit by a private person.

SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the 'Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session.	Seven days . .	The date of the sentence
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days . .	The date of the decree or order.
152.—Under the Code of Civil Procedure, 1908, to the Court of a District Judge.	Thirty days . .	The date of the decree or order appealed from.
153.—Under the same Code to a High Court from an order of a Subordinate Court refusing leave to appeal to His Majesty in Council.	Ditto . .	The date of the order.

V of 1898.

V of 1908.

<sup>1</sup> Genl. Acts, Vol. V.

<sup>2</sup> *Supra.*

(The First Schedule.—Second Division : Appeals. Third Division : Applications.

THE FIRST SCHEDULE—*contd.*SECOND DIVISION : APPEALS—*concl'd.*

Description of appeal.	Period of limitation.	Time from which period begins to run.	
154.—Under the <sup>1</sup> Code of Criminal Procedure, 1898, to any Court other than a High Court	Thirty days . .	The date of the sentence or order appealed from.	V of 1898.
155.—Under the same Code to a High Court, except in the cases provided for by article 150 and article 157.	Sixty days . .	The date of the sentence or order appealed from.	
156.—Under the <sup>2</sup> Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153	Ninety days . .	The date of the decree or order appealed from.	V of 1908.
157.—Under the <sup>1</sup> Code of Criminal Procedure, 1898, from an order of acquittal.	Six months . .	The date of the order appealed from.	V of 1898.

## THIRD DIVISION : APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.	
158.—Under the <sup>2</sup> Code of Civil Procedure, 1908, to set aside an award	Ten days . .	When the award is submitted to the Court.	V of 1908.
159.—For leave to appear and defend a suit under summary procedure referred to in section 128 (2) (f) of the same Code.	Ditto . .	When the summons is served.	
160.—For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.	Fifteen days . .	When the application for review is rejected.	
161.—For a review of judgment by a Provincial Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto . .	The date of the decree or order.	

<sup>1</sup> Genl. Acts, Vol. V.<sup>2</sup> *Supra.*

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay or the Chief Court of the Punjab or the Chief Court of Lower Burma in the exercise of its original jurisdiction.	Twenty days . .	The date of the decree or order
163.—By a plaintiff, for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.	Thirty days . .	The date of the dismissal
164.—By a defendant, for an order to set aside a decree passed <i>ex parte</i> .	Ditto . .	The date of the decree or, where the summons was not duly served, when the applicant has knowledge of the decree
165.—Under the Code of Civil Procedure, 1908, by a person dispossessed of immoveable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto . .	The date of the dispossession. V of 1908.
166.—Under the same Code to set aside a sale in execution of a decree.	Ditto . .	The date of the sale
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.	Ditto . .	The date of the resistance or obstruction.
168.—For the readmission of an appeal dismissed for want of prosecution.	Ditto . .	The date of the dismissal.
169.—For the re-hearing of an appeal heard <i>ex parte</i> .	Ditto . .	The date of the decree in appeal or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.
170.—For leave to appeal as a pauper.	Ditto . .	The date of the decree appealed from.
171.—Under the Code of Civil Procedure, 1908, for an order to set aside an abatement.	Sixty days . .	The date of the abatement V of 1908.

<sup>1</sup> *Supra.*

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application	Period of limitation.	Time from which period begins to run.
172.—Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.	Sixty days . .	The date of the order of dismissal.
173.—For a review of judgment except in the cases provided for by article 161 and article 162.	Ninety days . .	The date of the decree or order.
174.—For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified	Ditto . .	When the payment or adjustment is made.
175.—For payment of the amount of a decree by instalments.	Six months . .	The date of the decree.
176.—Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.	Ditto . .	The date of the death of the deceased plaintiff or appellant.
177.—Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.	Ditto . .	The date of the death of the deceased defendant or respondent.
178.—Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court, or of an award made in any matter referred to arbitration without the intervention of a Court	Ditto . .	The date of the award.
179.—By a person desiring to appeal under the same Code to His Majesty in Council for leave to appeal.	Ditto . .	The date of the decree appealed from.
180.—By a purchaser of immoveable property at a sale in execution of a decree for delivery of possession.	Three years . .	When the sale becomes absolute.

<sup>1</sup> *Supra.*

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*contd.*THIRD DIVISION : APPLICATIONS—*contd.*

Description of application.	Period of limitation.	Time from which period begins to run.
181.—Applications for which no period of limitation is provided elsewhere in this schedule or by section 48 of the <sup>1</sup> Code of Civil Procedure, 1908.	Three years . . .	When the right to apply accrues.
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the <sup>1</sup> Code of Civil Procedure, 1908.	Three years; or where a certified copy of the decree or order has been registered, six years	<p>1. The date of the decree or order, or</p> <p>2. (where there has been an appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or</p> <p>3 (where there has been a review of judgment) the date of the decision passed on the review, or</p> <p>4. (where the decree has been amended) the date of amendment, or</p> <p>5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or</p> <p>6. (where the notice next hereinafter mentioned has been issued) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the <sup>1</sup>Code of Civil Procedure, 1908, or</p> <p>7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.</p> <p><i>Explanation I.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this</p>

V of 1908.

V of 1908.

<sup>1</sup> *Supra.*

(The First Schedule.—Third Division : Applications.)

THE FIRST SCHEDULE—*concl'd.*THIRD DIVISION : APPLICATIONS—*concl'd.*

Description of application	Period of limitation.	Time from which period begins to run
182.—For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908— <i>concl'd</i>	Three years ; or, where a certified copy of the decree or order has been registered, six years.	<p>article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all</p> <p>Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But, where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all</p> <p><i>Explanation II</i> — “Proper Court” means the Court whose duty it is to execute the decree or order.</p>
183.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.	Twelve years . . .	<p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right :</p> <p>Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revival, payment or acknowledgment or the latest of such revivals, payments or acknowledgments, as the case may be.</p>

<sup>1</sup> *Supra.*



(The Second Schedule.—Territories referred to in Section 31. The Third Schedule.—Enactments repealed.)

### THE SECOND SCHEDULE.

TERRITORIES REFERRED TO IN SECTION 31.

(See Section 31.)

The Presidency of Fort St. George.

The Presidency of Bombay.

The Sambalpur District of the Bengal Division of the Presidency of Fort William.

The United Provinces of Agra and Oudh.

Burma.

The Central Provinces.

Ajmer-Merwara.

### THE THIRD SCHEDULE.

ENACTMENTS REPEALED.

(See Section 32.)

Year.	No.	Short title.	Extent of repeal.
1877	XV	The Indian Limitation Act, 1877	The whole.
1877	XVII	The Punjab Courts Act, 1877 . .	So much as has not been repealed.
1879	XII	The Registration and Limitation Acts Amendment Act, 1879.	In the title the words "and the Limitation Act, 1877" and after section 107, from the words "and whereas" to the end of the Act.
1881	V	The Probate and Administration Act, 1881.	Section 156.
1887	IX	The Provincial Small Cause Courts Act, 1887.	Section 36.
1888	VII	The Civil Procedure Code Amendment Act, 1888	In the title and in the preamble, the words "and the Indian Limitation Act, 1877", and of section 66 so much as has not been repealed.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and in the preamble, the words "the Indian Limitation Act, 1877", and section 1.
1899	X	The Carriers Act, 1899 .	Section 3.
1900	VI	The Lower Burma Courts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.
1900	XI	The Indian Limitation Amendment Act, 1900.	The whole.
1906	IV	The Presidency Small Cause Courts Act, 1906.	Section 5.

ACT No. X OF 1908.<sup>1</sup>

[11th September, 1908].

An Act to make special provision for the payment of duty on salt in certain cases.

WHEREAS it is expedient to make special provision for the payment of duty on salt in certain cases ; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Salt-duties Act, 1908 ; and

Short title  
and extent.

(2) It extends to the whole of British India.

2. Where by any enactment any duty is imposed on any salt manufactured in or imported into or transported within British India, the Governor General in Council or the Local Government may, by notification in the official Gazette, make rules providing for the payment of such duty within a period not exceeding six months from the date on which payment is due, and for the furnishing of security for such payment ; and salt may be manufactured, imported or transported in accordance with rules so made as if the duty payable thereon had been paid.

Payment of  
duty in  
certain cases.

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<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 279 and for Proceedings in Council, *see ibid*, 1908, Pt. VI, pp. 127 and 149.

ACT No. XIV OF 1908.<sup>1</sup>

11th December, 1908.

An Act to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace ; It is hereby enacted as follows :—

Short title  
and extent.

1. (1) This Act may be called the Indian Criminal Law Amendment Act, 1908.

(2) It extends to the Provinces of Bengal and of Eastern Bengal and Assam ; but the Governor General in Council may, at any time, by notification in the Gazette of India, extend the whole or any Part thereof to any other Province

(3) When extending Part I to any province under sub-section (2) the Governor General in Council may declare the operation of the provisions of that Part relating to the constitution of the Special Bench to be subject to such modifications as may in the opinion of the Governor General in Council be necessary to adapt those provisions to the circumstances of that province.

## PART I.

## SPECIAL PROCEDURE.

Application  
of Part.

2. (1) Where a Magistrate has taken cognizance of any offence specified in the Schedule, and it appears to the Governor General in Council or to the Local Government that in the interests of peace and good order the provisions of this Part should be made to apply to proceedings in respect of such offence, the Governor General in Council, or the Local Government, with the previous sanction of the Governor General in Council, may make an order in writing to that effect, and may by such order direct that the provisions of this part shall apply to such proceedings.

(2) No order shall be made under sub-section (1) in any case in which an order of commitment to the High Court or Court of Session has been made under the <sup>2</sup>Code of Criminal Procedure, 1898 ; but, save as aforesaid, an order may be made in respect of any offence whether committed before or after the commencement of this Act, or, in the case of a province to which this Part is extended under section 1, before or after such extension. V of 1898.

Inquiry by  
Magistrate.

3. (1) On receipt of an order under section 2 the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. IV, p. 203 and for Proceedings in Council, see *ibid*, Pt. VI, p. 158.

<sup>2</sup> Genl. Acts, Vol. V.

has been transferred, shall proceed to inquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in the Schedule, and shall for that purpose record on oath the evidence of all such persons as may be produced in support of the prosecution, and may record any statement of the accused if voluntarily tendered by him.

V of 1898. (2) Where before the commencement of proceedings under this Act the evidence of a witness has been recorded under the <sup>1</sup>Code of Criminal Procedure, 1898, in the course of an inquiry into the same offence as that to which such proceedings relate, such evidence may be treated for the purposes of this Act as if it had been taken under sub-section (1).

4. The accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during any such inquiry, nor shall any person have any right of access to the Court of the Magistrate while he is holding such inquiry. Inquiry to be *ex parte*.

5. When the evidence referred to in section 3 has been taken, the Magistrate shall, if he finds that it is not sufficient to put the accused upon his trial for an offence specified in the Schedule, record his reasons and discharge the accused, unless it appears to the Magistrate that the accused should be tried or committed for trial under the provisions of the <sup>1</sup>Code of Criminal Procedure, 1898, for any other offence, in which case the Magistrate shall proceed accordingly. When accused person to be discharged.

V of 1898.

6. When upon such evidence being taken the Magistrate is satisfied that it is sufficient to put the accused upon his trial for an offence specified in the Schedule, he shall— Power to send accused for trial.

- (a) frame a charge under his hand declaring with what offence the accused is charged,
- (b) make an order directing that the accused be sent to the High Court for trial, and
- (c) cause the accused to be supplied with a copy of the order and of the charge and of the evidence taken under section 3.

7. In framing any charge under section 6 the Magistrate may also frame a charge for any offence not specified in the Schedule with which the accused may be charged at the same trial, and the procedure of this Act shall apply to any such charge. Joinder of charges.

8. When an order for trial has been made under section 6, the Magistrate shall send the order together with the charge, the record of inquiry and anything which is to be produced in evidence to the Clerk of the Crown or other officer appointed in this behalf by the High Court. Charge, etc., to be forwarded to High Court.

<sup>1</sup> Genl. Acts, Vol. V.

(Part I.—*Special Procedure.* Part II.—*Unlawful Associations.*)

Power to  
summon  
supplement-  
ary wit-  
nesses.

9. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the order for trial and before the commencement of the trial.

(2) When the Magistrate examines witnesses under sub-section (1) he shall forthwith cause the accused to be supplied with a copy of the evidence of such witnesses.

Witnesses for  
defence.

10. The accused may at any time before his trial give to the Clerk of the Crown or other officer as aforesaid a list of the persons whom he wishes to be summoned to give evidence on his trial.

Procedure in  
High Court.

11. (1) All persons sent for trial to the High Court under this Act shall be tried by a Special Bench of the Court composed of three Judges.

(2) No trial before the Special Bench shall be by jury.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

Bail.

12. No person who has been remanded to custody in the course of proceedings under this Act shall be released on bail under the provisions of section 497 of the <sup>1</sup> Code of Criminal Procedure, 1898, if there appear to be sufficient grounds for further inquiry into the guilt of such person.

Special rule  
of evidence.

13. Notwithstanding anything contained in section 33 of the <sup>2</sup> Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused.

Procedure.

14. (1) The provisions of the <sup>1</sup> Code of Criminal Procedure, 1898, shall not apply to proceedings taken under this Part in so far as they are inconsistent with the special procedure prescribed in this Part.

(2) When holding a trial under section 11, the Special Bench shall apply the provisions of Chapter XXIII of the said Code with such modifications as may appear necessary to adapt those provisions to the case of a trial before the High Court without a jury.

## PART II.

### UNLAWFUL ASSOCIATIONS.

Definitions.

15. In this Part :—

(1) “association” means any combination or body of persons, whether the same be known by any distinctive name or not ; and

<sup>1</sup> Genl Acts, Vol. V

<sup>2</sup> Genl Acts, Vol. II.

## (Part II.—Unlawful Associations.)

(2) “unlawful association” means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by the Governor General in Council under the powers hereby conferred.

16. If the Governor General in Council is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Governor General in Council may, by notification in the official Gazette,<sup>1</sup> declare such association to be unlawful.

Power to  
declare asso-  
ciation un-  
lawful.

17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Penalties.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

18. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

Continuance  
of association.

### THE SCHEDULE.

(See section 3.)

of 1860. 1. Any offence under the following sections of the <sup>2</sup> Indian Penal Code, namely :—

Chapter VI, sections 121, 121A, 122, 123 and 124.

Chapter VII, sections 131 and 132.

Chapter VIII, section 148.

Chapter XVI, sections 302, 304, 307, 308, 326, 327, 329, 332, 333, 363, 364, 365 and 368.

Chapter XVII, sections 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 401, 401, 402, 431, 431, 436, 437, 438, 440, 454, 455, 457, 458, 459 and 460.

Chapter XXII, section 506.

1908.

2. Any offence under the <sup>3</sup> Explosive Substances Act, 1908; and

3. Any attempt to commit or any abetment of any of the above offences.

<sup>1</sup> For declarations, see Gazette of India, 1909, Pt. I, pp. 31 and 167.

<sup>2</sup> Genl Acts, Vol I.

<sup>3</sup> *Supra*.

## THE INDIAN PORTS ACT, 1908.

## C O N T E N T S.

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CHAPTER I.

## PRELIMINARY.

## SECTIONS.

1. Title and extent.
2. Savings.
3. Definitions.

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CHAPTER II.

## POWERS OF THE LOCAL GOVERNMENT.

4. Power to extend or withdraw the Act or certain portions thereof.
5. Alteration of limits of ports.
6. Power to make port-rules.

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CHAPTER III.

## PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

7. Appointment of conservator.
8. Power of conservator to give and enforce directions for certain specified purposes.
9. Power to cut warps and ropes.
10. Removal of obstructions within limits of port.
11. Recovery of expenses of removal.
12. Removal of lawful obstructions.
13. Fouling of Government moorings
14. Raising or removal of wreck impeding navigation within limits of port.
15. Power to board vessels and enter buildings.
16. Power to require crews to prevent or extinguish fire.
17. Appointment and powers of health-officer.
18. Indemnity of Government against act or default of port-official or pilot.

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CHAPTER IV.

## RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS.

*General Rules.*

19. Injuring buoys, beacons and moorings.
20. Wilfully loosening vessel from moorings.

## SECTIONS.

21. Improperly discharging ballast.
22. Graving vessel within prohibited limits.
23. Boiling pitch on board vessel within prohibited limits.
24. Drawing spirits by unprotected artificial light.
25. Warping.
26. Leaving out warp or hawser after sunset.
27. Discharge of fire-arms in port.
28. Penalty on master omitting to take order to extinguish fire.
29. Unauthorized person not to search for lost stores.
30. Removing stones or injuring shores of port prohibited.

*Special Rules.*

31. Moving of vessels without pilot or permission of harbour-master.
32. Provision of certain vessels with fire-extinguishing apparatus.

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CHAPTER V.

## PORT-DUES, FEES AND OTHER CHARGES.

33. Levy of port-dues.
34. Variation of port-dues by Local Government.
35. Fees for pilotage and certain other services.
36. Receipt, expenditure and account of port-charges.
37. Grouping of ports.
38. Receipts for port-charges.
39. Master to report arrival.
40. Conservator may in certain cases ascertain draught and charge expense to master.
41. Ascertainment of tonnage of vessel liable to port-dues.
42. Distraint and sale on refusal to pay port-charges.
43. No port-clearance to be granted until port-charges are paid.
44. Port-charges payable in one port recoverable at any other port.
45. Penalty for evading payment of port-charges.
46. Port-due on vessels in ballast.
47. Port-due on vessels not discharging or taking in cargo.
48. Port-dues not to be chargeable in certain cases.
49. Power to impose hospital port dues.
50. Application and account of hospital port-dues.

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THE FIRST SCHEDULE.—PORTS, VESSELS CHARGEABLE, RATE OF PORT  
DUES AND FREQUENCY OF PAYMENT.

THE SECOND SCHEDULE.—ENACTMENTS REPEALED.

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(Chap. I.—Preliminary.)

ACT No. XV OF 1908.<sup>1</sup>

[19th December, 1908.]

An Act to consolidate the Enactments relating to Ports and  
Port-charges.

WHEREAS it is expedient to consolidate the enactments relating to ports  
and port-charges; It is hereby enacted as follows :—

## CHAPTER I.

## PRELIMINARY.

1. (1) This Act may be called the Indian Ports Act, 1908.

Title and  
extent.

(2) It shall extend, save as otherwise appears from its subject or con-  
text,—

(a) to the ports mentioned in the first schedule, and to such parts of the  
navigable rivers and channels leading to such ports respectively  
as have been declared to be subject to Act XXII of 1875 (*for the  
Regulation of Ports and Port-dues*) or to the Indian Ports Act,  
1875, or to the Indian Ports Act, 1889;

XII of 1875.  
X of 1889.

(b) to the other ports or parts of navigable rivers or channels to which the  
Local Government, in exercise of the power hereinafter conferred,  
extends this Act.

(3) But nothing in section 31 or section 32 shall apply to any port, river  
or channel to which the section has not been specially extended by the Local  
Government.

2. Nothing in this Act shall—

Savings.

(i) apply to any vessel belonging to, or in the service of, His Majesty or  
the Government of India, or to any vessel of war belonging to any  
Foreign Prince or State, or

(ii) deprive any person of any right of property or other private right,  
except as hereinafter expressly provided, or

(iii) affect any law or rule relating to the customs or any order or direc-  
tion lawfully made or given pursuant thereto.

3. In this Act, unless there is anything repugnant in the subject or con-  
text,—

Definitions.

(1) "Magistrate" means a person exercising powers under the <sup>2</sup> Code of  
Criminal Procedure, 1898, not less than those of a Magistrate of the second  
class, and includes, in the towns of Calcutta, Madras and Bombay, a Presi-  
dency Magistrate.

V of 1898.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India 1908, Pt. V, p. 309; for  
Report of Select Committee, see *ibid.*, 1908, Pt. V, p. 359 and for Proceedings in Council, see *ibid.*,  
1908, Pt. VI, pp. 146, 154 and 182.

<sup>2</sup> General Acts, Vol. V.

*(Chap. II.—Powers of the Local Government.)*

(2) "master," when used in relation to any vessel, means, subject to the provisions of any other enactment for the time being in force, any person (except a pilot or harbour-master) having for the time being the charge or control of the vessel :

(3) "pilot" means a person for the time being authorized by the Local Government to pilot vessels :

(4) "port" includes also any part of a river or channel in which this Act is for the time being in force :

(5) "port-officer" is synonymous with master-attendant :

(6) "ton" means a ton as determined or determinable by the rules for the time being in force for regulating the measurement of the net tonnage of British ships : and

(7) "vessel" includes anything made for the conveyance by water of human beings or of property.

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## CHAPTER II.

### POWERS OF THE LOCAL GOVERNMENT.

Power to  
extend or  
withdraw the  
Act or certain  
portions  
thereof.

4. (1) With the previous sanction of the Governor General in Council, the Local Government may, by notification in the local official Gazette,—

(a) extend this Act to any port in which this Act is not in force or to any part of any navigable river or channel which leads to a port and in which this Act is not in force ;

(b) specially extend the provisions of section 31 or section 32 to any port to which they have not been so extended ;

(c) withdraw this Act or section 31 or section 32 from any port or any part thereof in which it is for the time being in force.

(2) A notification under clause (a) or clause (b) of sub-section (1) shall define the limits of the area to which it refers.

(3) Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels, or for the improvement, maintenance or good government of the port and its approaches, whether within or without high-water-mark, and, subject to any rights of private property therein, any portion of the shore or bank within fifty yards of high-water-mark.

(4) In sub-section (3) the expression "high-water-mark" means the highest point reached by ordinary spring tides at any season of the year.

*(Chap. II.—Powers of the Local Government.)*

5. (1) The Local Government may, with the previous sanction of the Governor General in Council and subject to any rights of private property, alter the limits of any port in which this Act is in force.

Alteration of  
limits of  
ports.

(2) When the Local Government alters the limits of a port under sub-section (1), it shall declare or describe, by notification in the local official Gazette, and by such other means, if any, as it thinks fit, the precise extent of such limits.

6. (1) The Local Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules consistent with this Act, as it thinks necessary for any of the following purposes, namely :—

Power to  
make port  
rules.

- (a) for regulating the time and hours at and during which, the speed at which, and the manner and conditions in and on which, vessels generally or vessels of any class defined in the rules, may enter, leave or be moved in any port subject to this Act ;
- (b) for regulating the berths, stations and anchorages to be occupied by vessels in any such port ;
- (c) for striking the yards and top masts, and for rigging-in the booms and yards, of vessels in any such port, and for swinging or taking in davits, boats and other things projecting from such vessels ;
- (d) for the removal or proper hanging or placing of anchors, spars and other things being in or attached to vessels in any such port ;
- (e) for regulating vessels whilst taking-in or discharging passengers, ballast or cargo, or any particular kind of cargo, in any such port, and the stations to be occupied by vessels whilst so engaged ;
- (f) for keeping free passages of such width as may be deemed necessary within any such port, and along or near to the piers, jetties, landing-places, wharves, quays, docks, moorings and other works in or adjoining to the same, and for marking out the spaces so to be kept free ;
- (g) for regulating the anchoring, fastening, mooring and unmooring of vessels in any such port ;
- (h) for regulating the moving and warping of all vessels within any such port and the use of warps therein ;
- (i) for regulating the use of the mooring buoys, chains and other moorings in any such port ;
- (j) for fixing the rates to be paid for the use of such moorings when belonging to the Government, or of any boat, hawser or other thing belonging to the Government ;

*(Chap. II.—Powers of the Local Government.)*

- (k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port, and for determining the quantity of cargo or number of passengers to be carried by any such vessels;
- (l) for regulating the use of fires and lights within any such port;
- (m) for enforcing and regulating the use of signals or signal-lights by vessels by day or by night in any such port;
- (n) for regulating the number of the crew which must be on board any vessel afloat within the limits of any such port;
- (o) for regulating the employment of persons engaged in cleaning or painting vessels, or in working in the bilges, boilers or double bottoms of vessels in any such port;
- (p) <sup>1</sup> with the previous sanction of the Governor General in Council, for the establishment and regulation of places to be used as sanatoria for the segregation or as hospitals for the treatment of persons who are or have recently been suffering from any dangerous infectious or contagious disease, and for regulating the action, including the disposal of dead bodies, to be taken—
  - (i) where a vessel on which there is any case of dangerous infectious or contagious disease common in India, enters or is in any such port;
  - (ii) where a vessel on which there is any case of dangerous infectious or contagious disease uncommon in India, enters or is in any such port;
  - (iii) where a vessel on which there has been any case of dangerous infectious or contagious disease or any death within twelve days previous to the arrival of the vessel at such port, enters or is in any such port;
  - (iv) where a vessel enters any such port from a port in which, or in the neighbourhood of which, there is believed to be, or to have been at the time when the vessel left such port, any dangerous infectious or contagious disease uncommon in India;
  - (v) where a vessel enters any such port having on board any person transhipped from a vessel coming from a port in which or in the neighbourhood of which there is believed to be or to have been at the time when such

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<sup>1</sup> See as to sleeping sickness, Fort St. George Gazette, 1909, Pt. I, p. 116.

*(Chap. II.—Powers of the Local Government.)*

last-mentioned vessel left such last-mentioned port, any dangerous infectious or contagious disease uncommon in India ;

(vi) where there is a dead body on board a vessel in any such port ;

(vii) where there are on board a vessel in any such port food-stuffs which, owing to decomposition or for any other reason, are, in the opinion of the health-officer, unfit for human consumption ; or

(viii) where a vessel leaves any such port while there is in the port or in its neighbourhood any dangerous infectious or contagious disease uncommon in India ;

for the purposes of this clause only such diseases shall be deemed to be dangerous infectious or contagious diseases, or diseases<sup>1</sup> common or uncommon in India, as the Governor General in Council may by order direct ; and

(g) for securing the protection from heat of the officers and crew of vessels in any such port by requiring the owner or master of any such vessel—

(i) to provide curtains and double awnings for screening from the sun's rays such portions of the deck as are occupied by, or are situated immediately above, the quarters of the officers and crew ;

(ii) to erect windsails so far as the existing portholes or apertures in the deck admit of their being used for ventilating the quarters of the officers and crew ;

(iii) when the deck is made of iron and not wood-sheathed, to cover with wooden planks or other suitable non-conducting material such portions of the deck as are situated immediately above the quarters of the officers and crew ;

(iv) when the quarters used by the crew and the galley are separated by an iron bulk-head only, to furnish a temporary screen of some suitable non-conducting material between such quarters and the galley.

(2) The power to make rules under sub-section (1) is subject to the condition of the rules being made after previous publication :

Provided that nothing in this sub-section shall be construed to affect the validity of any rule in force immediately before the commencement of the Indian Ports Act, 1889, and continued by section 2, sub-section (2) of that Act.

\* <sup>1</sup> See Gen. R. and O. ; Gazette of India, 1908, Pt. I, p. 291 (sleeping sickness).

*(Chap. III.—Port-officials and their Powers and Duties)*

(3) If any person disobeys any rule made under clause (p) of sub-section (1), he shall be punishable for every such offence with fine which may extend to one thousand rupees.

(4) If a master fails wholly or in part to do any act prescribed by any rule made under clause (p) of sub-section (1), the health-officer shall cause such act to be done, and the reasonable expenses incurred in doing such act shall be recoverable by him from such master.

## CHAPTER III.

## PORT-OFFICIALS AND THEIR POWERS AND DUTIES.

Appointment  
of  
conservator.

7. (1) The Local Government shall appoint some officer or body of persons to be conservator of every port subject to this Act

(2) Subject to any direction by the Local Government to the contrary,—

(a) in ports where there is a port-officer the port officer shall be the conservator :

(b) in ports where there is no port-officer, but where there is a harbour-master, the harbour-master shall be the conservator.

(3) Where the harbour-master is not conservator, the harbour-master and his assistants shall be subordinate to, and subject to the control of, the conservator.

(4) The conservator shall be subject to the control of the Local Government, or of any intermediate authority which that Government may appoint.

Power of  
conservator to  
give and  
enforce  
directions for  
certain  
specified  
purposes.

8. (1) The conservator of any port subject to this Act may, with respect to any vessel within the port, give directions for carrying into effect any rule for the time being in force therein under section 6.

(2) If any person wilfully and without lawful excuse refuses or neglects to obey any lawful direction of the conservator, after notice thereof has been given to him, he shall, for every such offence, be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to one hundred rupees for every day during which, after such notice as aforesaid, he is proved to have wilfully and without lawful excuse continued to disobey the direction.

(3) In case of such refusal or neglect, the conservator may do, or cause to be done, all acts necessary for the purpose of carrying the direction into execution, and may hire and employ proper persons for that purpose, and all reasonable expenses incurred in doing such acts shall be recoverable by him from the person so refusing or neglecting to obey the direction.

Power to cut  
warps and  
ropes.

9. The conservator of any such port may, in case of urgent necessity, cut, or cause to be cut, any warp, rope, cable or hawser endangering the safety of any vessel in the port or at or near to the entrance thereof.

*(Chap. III.—Port-officials and their Powers and Duties.)*

10. (1) The conservator may remove, or cause to be removed, any timber, raft or other thing, floating or being in any part of any such port, which in his opinion obstructs or impedes the free navigation thereof or the lawful use of any pier, jetty, landing-place, wharf, quay, dock, mooring or other work on any part of the shore or bank which has been declared to be within the limits of the port and is not private property.

Removal of  
obstructions  
within limits  
of port.

(2) The owner of any such timber, raft or other thing shall be liable to pay the reasonable expenses of the removal thereof, and if such owner or any other person has without lawful excuse caused any such obstruction or impediment, or causes any public nuisance affecting or likely to affect such free navigation or lawful use, he shall also be punishable with fine which may extend to one hundred rupees.

(3) The conservator or any Magistrate having jurisdiction over the offence may cause any such nuisance to be abated

11. If the owner of any such timber, raft or other thing, or the person who has caused any such obstruction, impediment or public nuisance as is mentioned in the last foregoing section, neglects to pay the reasonable expenses incurred in the removal thereof, within one week after demand, or within fourteen days after such removal has been notified in the local official Gazette or in such other manner as the Local Government by general or special order directs, the conservator may cause such timber, raft or other thing, or the materials of any public nuisance so removed, or so much thereof as may be necessary, to be sold by public auction ;

Recovery of  
expenses of  
removal.

and may retain all the expenses of such removal and sale out of the proceeds of the sale, and shall pay the surplus of such proceeds, or deliver so much of the thing or materials as may remain unsold, to the person entitled to receive the same ;

and, if no such person appears, shall cause the same to be kept and deposited in such manner as the Local Government directs ;

and may, if necessary, from time to time realize the expenses of keeping the same, together with the expenses of sale, by a further sale of so much of the thing or materials as may remain unsold.

12. (1) If any obstruction or impediment to the navigation of any port subject to this Act has been lawfully made, or has become lawful by reason of the long continuance of such obstruction or impediment, or otherwise, the conservator shall report the same for the information of the Local Government, and shall, with the sanction of that Government, cause the same to be removed or altered, making reasonable compensation to the person suffering damage by such removal or alteration.

Removal of  
lawful  
obstructions.



*(Chap. III.—Port-officials and their Powers and Duties)*

(2) Any dispute arising concerning such compensation shall be determined according to the law relating to like disputes in the case of land required for public purposes.

Fouling of  
Government  
moorings.

13. (1) If any vessel hooks or gets foul of any of the buoys or moorings laid down by or by the authority of the Local Government in any such port, the master of such vessel shall not, nor shall any other person except in case of emergency, lift the buoy or mooring for the purpose of unhooking or getting clear from the same without the assistance of the conservator ;

and the conservator, immediately on receiving notice of such accident, shall assist and superintend the clearing of such vessel ;

and the master of such vessel shall, upon demand, pay such reasonable expenses as may be incurred in clearing the same.

(2) Any master or other person offending against the provisions of this section shall, for every such offence, be punishable with fine which may extend to one hundred rupees.

Raising or  
removal of  
wreck  
impeding  
navigation  
within limits  
of port.

14. (1) If any vessel is wrecked, stranded or sunk in any such port so as to impede, or be likely to impede, the navigation thereof, the conservator may cause the vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting under sub-section (1) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent. of the amount of such expenses, the conservator may sell the property by public auction, if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto :

Provided that the person makes his claim within three years from the date of the sale.

Power to  
board vessels  
and enter  
buildings.

15. (1) The conservator or any of his assistants may, whenever he suspects that any offence against this Act has been, or is about to be, committed, or whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

and the person appointed under this Act to receive any port-dues, fees or other charges payable in respect of any vessel, may, whenever it is necessary for him so to do in the performance of any duty imposed upon him by this Act,

*(Chap. III.—Port-officials and their Powers and Duties.)*

either alone or with any other person, board any vessel or enter any building or place, within the limits of any port subject to this Act.

(2) If the master of the vessel, or any person in possession or occupation of the building or place, without lawful excuse, refuses to allow any such person as is mentioned in sub-section (1) to board or enter such vessel, building or place in the performance of any duty imposed upon him by this Act, he shall for every such offence be punishable with fine which may extend to two hundred rupees.

16. (1) For the purpose of preventing or extinguishing fire in any port subject to this Act, the conservator or port-officer may require the master of any vessel within the port to place at his disposal such number as he requires, not exceeding three-fourths, of the crew then under the orders of such master.

Power to require crews to prevent or extinguish fire.

(2) Any master refusing or neglecting to comply with such requisition shall be punishable with fine which may extend to five hundred rupees, and any seaman then under his orders who, after being directed by the master to obey the orders of the conservator or port-officer for the purpose aforesaid, refuses to obey such orders, shall be punishable with fine which may extend to twenty-five rupees.

17. (1) The Local Government may appoint at any port subject to this Act an officer to be called the health-officer.

Appointment and powers of health-officer.

(2) A health-officer shall, subject to the control of the Local Government, have the following powers, within the limits of the port for which he is appointed, namely :—

- (a) with respect to any vessel, the powers conferred on a shipping-master by the <sup>1</sup> Indian Merchant Shipping Act, 1859, section 71 ;
- (b) power to enter on board any vessel and medically examine all or any of the seamen or apprentices on board the vessel ;
- (c) power to require and enforce the production of the log-book and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board the vessel ;
- (d) power to call before him and question for any such purpose all or any of those persons and to require true answers to any questions which he thinks fit to ask ;
- (e) power to require any person so questioned to make and subscribe a declaration of the truth of the statements made by him.

18. The Government shall not be responsible for any act or default of any conservator, port-officer or harbour-master, of any port subject to this Act, or of any deputy or assistant of any of the authorities aforesaid, or of any person

Indemnity of Government against act of default of

I of 1859.

(Chap. IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

port official  
or pilot.

acting under the control or direction of any such authority, deputy or assistant, or for any act or default of any pilot, or for any damage sustained by any vessel in consequence of any defect in any of the moorings, hawser's or other things belonging to the Government which may be used by the vessel :

Provided that nothing in this section shall protect the Secretary of State for India in Council from a suit in respect of any act done by or under the express order or sanction of the Government.

#### CHAPTER IV.

##### RULES FOR THE SAFETY OF SHIPPING AND THE CONSERVATION OF PORTS.

###### *General Rules.*

Injuring  
buoys, bea-  
cons and  
moorings.

19. (1) No person shall, without lawful excuse lift, injure, loosen or set adrift any buoy, beacon or mooring fixed or laid down by, or by the authority of, the Local Government in any port subject to this Act.

(2) If any person offends against the provisions of this section, he shall for every such offence be liable, in addition to the payment of the amount of damage done, to fine which may extend to two thousand rupees, or to imprisonment for a term which may extend to two years.

Wilfully  
loosening ves-  
sel from  
moorings.

20. If any person wilfully and without lawful excuse loosens or removes from her moorings any vessel within any such port without leave or authority from the owner or master of the vessel, he shall, for every such offence, be punishable with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months.

Improperly  
discharging  
ballast.

21. (1) No ballast or rubbish, and no other thing likely to form a bank or shoal or to be detrimental to navigation, shall, without lawful excuse, be cast or thrown into any such port or into or upon any place on shore from which the same is liable to be washed into any such port, either by ordinary or high tides, or by storms or landfloods.

(2) Any person who by himself or another so casts or throws any ballast or rubbish or any such other thing, and the master of any vessel from which the same is so cast or thrown shall be punishable with fine which may extend to five hundred rupees, and shall pay any reasonable expenses which may be incurred in removing the same.

(3) If, after receiving notice from the conservator of the port to desist from so casting or throwing any ballast or rubbish or such other thing, any master continues so to cast or throw it, he shall also be liable to simple imprisonment for a term which may extend to two months.

## (Chap. IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

(4) Nothing in this section applies to any case in which the ballast or rubbish or such other thing is cast or thrown into any such port with the consent in writing of the conservator, or within any limits within which such act may be authorized by the Local Government.

22. If any person graves, breams or smokes any vessel in any such port contrary to the directions of the conservator, or at any time or within any limits at or within which such act is prohibited by the Local Government, he and the master of the vessel shall for every such offence be punishable with fine which may extend to five hundred rupees each.

Graving vessel within prohibited limits.

23. If any person boils or heats any pitch, tar, resin, dammer, turpentine, oil, or other such combustible matter on board any vessel within any such port, or at any place within its limits where such act is prohibited by the Local Government, or contrary to the directions of the conservator, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Boiling pitch on board vessel within prohibited limits.

24. If any person, by an unprotected artificial light, draws off spirits on board any vessel within any port subject to this Act, he and the master of the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees each.

Drawing spirits by unprotected artificial light.

25. (1) Every master of a vessel in any port subject to this Act shall, when required so to do by the conservator, permit warps or hawsers to be made fast to the vessel for the purpose of warping any other vessel in the port, and shall not allow any such warp or hawser to be let go until required so to do.

Warping.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

26. (1) A master of a vessel shall not cause or suffer any warp or hawser attached to his vessel to be left out in any port subject to this Act after sunset in such a manner as to endanger the safety of any other vessel navigating in the port.

Leaving out warp or hawser after sunset.

(2) A master offending against sub-section (1) shall be punishable for every such offence with fine which may extend to two hundred rupees.

27. If any person, without lawful excuse, discharges any fire-arm in any port subject to this Act, or on or from any pier, landing-place, wharf or quay thereof, except a gun loaded only with gunpowder for the purpose of making a signal of distress, or for such other purpose as may be allowed by the Local Government, he shall for every such offence be punishable with fine which may extend to fifty rupees.

Discharge of fire-arms in port.

(Chap. IV.—Rules for the Safety of Shipping and the Conservation of Ports.)

Penalty on master omitting to take order to extinguish fire.

28. If the master of any vessel in which fire takes place while lying in any such port wilfully omits to take order to extinguish the fire or obstructs the conservator or the port officer or any person acting under the authority of the conservator or port-officer in extinguishing or attempting to extinguish the fire, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Unauthorized person not to search for lost stores.

29. (1) No person, without the permission of the conservator, shall, in any port subject to this Act, creep or sweep for anchors, cables or other stores lost or supposed to be lost therein.

(2) If any person offends against the provisions of sub-section (1), he shall be punishable with fine which may extend to one hundred rupees.

Removing stones or injuring shores of port prohibited.

30. (1) No person without the permission of the conservator shall in any port subject to this Act remove or carry away any rock, stones, shingle, gravel, sand or soil or any artificial protection from any part of the bank or shore of the port ;

and no person shall sink or bury in any part of such bank or shore, whether the same is public or private property, any mooring-post, anchor or any other thing, or do any other thing which is likely to injure or to be used so as to injure such bank or shore, except with the permission of the conservator, and with the aid or under the inspection of such person, if any, as the conservator may appoint to take part in or overlook the performance of such work.

(2) If any person offends against sub-section (1), he shall for every such offence be punishable with fine which may extend to one hundred rupees and shall pay any reasonable expenses which may be incurred in repairing any injury done by him to the bank or shore.

*Special Rules.*

Moving of vessels without pilot or permission of harbour-master.

31. (1) No vessel of the measurement of two hundred tons or upwards shall enter, leave or be moved in any port to which this section has been specially extended without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board ;

and no vessel of any measurement less than two hundred tons and exceeding one hundred tons shall enter, leave or be moved in any such port without having a pilot, harbour-master or assistant of the port-officer or harbour-master on board, unless authority in writing so to do has been obtained from the conservator or some officer empowered by him to give such authority.

(2) If any vessel, except in case of urgent necessity, enters, leaves or is move in the port contrary to the provisions of sub-section (1) the master of

(Chap. IV.—*Rules for the Safety of Shipping and the Conservation of Ports.* Chap. V.—*Port-dues, Fees and other Charges.*)

the vessel shall for every such offence be punishable with fine which may extend to two hundred rupees, unless upon application to the proper officer the master was unable to procure a pilot, harbour-master or assistant of the port-officer or harbour master to go on board the vessel.

(3) Nothing in sub-sections (1) and (2) shall apply to native vessels when they are entering, leaving or being moved in the port of Bombay.

(4) If any question arises as to whether any vessel is a native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may appoint in this behalf shall be conclusive.

32. (1) Every vessel exceeding the measurement of two hundred tons and lying in any port to which this section has been specially extended, shall be provided with a proper force-pump and hose and appurtenances for the purpose of extinguishing any fire which may occur on board.

Provision of certain vessels with fire-extinguishing apparatus.

(2) The master of such a vessel who having been required by the conservator to comply with the provisions of sub-section (1), neglects or refuses, without lawful excuse, so to do for the space of seven days after such requisition, shall be punishable with fine which may extend to five hundred rupees.

## CHAPTER V.

### *Port-dues, Fees and other Charges.*

33. (1) In each of the ports mentioned in the first schedule such port-due not exceeding the amount specified for the port in the third column of the schedule as the Local Government directs, shall be levied on vessels entering the port and described in the second column of the schedule, but not oftener than the time fixed for the port in the fourth column of the schedule.

Levy of port dues.

(2) Whenever the Local Government with the previous sanction of the Governor General in Council declares any other port to be subject to this Act, it may, with the like sanction by the same or any subsequent declaration, further declare,—

- (a) in the terms of any of the entries in the second column of the first schedule, the vessels which are to be chargeable with port-dues on entering the port,
- (b) the highest rates at which such dues may be levied in respect of vessels chargeable therewith, and
- (c) the times at which such vessels are to be so chargeable.

*(Chap. V.—Port-dues, Fees and other Charges.)*

(3) All port-dues now leviable in any port shall continue to be so leviable until it is otherwise declared in exercise of the powers conferred by this section.

(4) An order increasing or imposing port-dues under its section shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette.

Variation  
of port-dues  
by Local  
Government.

34. The Local Government may exempt the vessels entering a port subject to this Act from payment of port-dues and cancel the exemption, or may vary the rates at which port-dues are to be levied in the port, in such manner as having regard to the receipts and charges on account of the port, it thinks expedient by reducing or raising the dues, or any of them :

Provided that the rates shall not in any case exceed the amount authorized to be taken by or under this Act.

Fees for  
pilotage and  
certain other  
services.

35. (1) Within any port subject to this Act, fees may be charged for pilotage, hauling, mooring, re-mooring, hooking, measuring and other services rendered to vessels, at such rates as the Local Government may direct :

Provided that, in the case of fees for pilotage, the previous sanction of the Governor General in Council has been obtained.

(2) The fees now chargeable for such services shall continue to be chargeable unless and until they are altered in exercise of the power conferred by sub-section (1).

Receipt,  
expenditure  
and account  
of port charges.

36. (1) The Local Government shall appoint some officer or body of persons at every port at which any dues, fees or other charges are authorized to be taken by or under this Act to receive the same and, subject to the control of the Local Government, to expend the receipts on any of the objects authorized by this Act.

(2) Such officer or body shall keep for the port a distinct account, to be called the port fund account showing, in such detail as the Local Government prescribes, the receipts and expenditure of the port, and shall publish annually as soon after the first day of April as may be practicable an abstract, in such form as that Government prescribes, of the account for the past financial year.

(3) If, for any of the purposes of this Act, an advance of money has been or shall be made by the Government on account of any port subject to this Act, simple interest upon that advance, or upon so much of it as remains or shall remain unrepaid, at such rate as the Governor General in Council may determine, shall be charged in the port fund account of the port.

(4) All money received under this Act at or on account of any port subject

*(Chap. V.—Port-dues, Fees and other Charges.)*

to this Act, excluding receipts on account of pilotage but including—

- (a) fines,
- (b) proceeds of waifs, and
- (c) any balance of the proceeds of a sale under section 14 where no right to the balance has been established on a claim made within three years from the date of the sale,

shall be credited in the port fund account of the port.

(5) All expenses incurred for the sake of any such port, excluding expenses on account of pilotage but including—

- (a) the pay and allowances of all persons upon the establishment of the port,
- (b) the cost of buoys, beacons, lights and all other works maintained chiefly for the benefit to vessels being in or entering or leaving the port or passing through the rivers or channels leading thereto,
- (c) pensions, allowances and gratuities of persons who have been employed in the port under this or any other enactment relating to ports and port-dues or such portion of those pensions, allowances and gratuities as the Local Government may by rule determine,
- (d) with the previous sanction of the Local Government, contributions towards the support of public hospitals or dispensaries suitable for the reception or relief of seamen or otherwise towards the provision of sanitary superintendence and medical aid for the shipping in the port and for seamen whether ashore or afloat belonging to vessels in the port and
- (e) with the like sanction, contributions towards sailors' homes, institutes, rest-houses and coffee-houses and for other purposes connected with the health, recreation and temporal well-being of sailors,

shall be charged to the port fund account of the port.

(6) Subject to the provisions of any local law as to the disposal of any balance from time to time standing to the credit of a port fund account, any such balance may be temporarily invested in such manner as the Local Government may direct.

37. (1) The Local Government may direct that for the purposes of the last foregoing section any number of ports shall be regarded as constituting a single port, and thereupon all moneys to be credited to the port fund account under sub-section (4) of that section shall form a common port fund account which shall be available for the payment of all expenses incurred for the sake of any of the ports :

Grouping of  
ports.



*(Chap. V.—Port-dues, Fees and other Charges.)*

Provided, with respect to the ports of Calcutta, Madras, Bombay, Rangoon, Karachi, Chittagong and Aden, that none of those ports may be grouped with any other port, and that the port fund account of each of those ports shall be kept separate from the port fund account of any other port.

(2) Where ports are grouped by or under this Act, the following consequences ensue, namely :—

- (a) the Local Government, in the exercise of its control over expenditure debitable to the common port fund account of the group, may, with the previous sanction of the Governor-General in Council, make rules with respect to the expenditure of the fund for the sake of the several ports of the group on the objects authorized by this Act, and shall cause effect to be given to any directions which the Governor General in Council may deem it necessary to issue with respect to such expenditure ; and
- (b) the Local Government may exercise its authority under section 34 as regards all the ports in the group collectively or as regards any of them separately.

Receipts for  
port-charges.

38. The person to whom any dues, fees or other charges authorized to be taken by or under this Act are paid shall grant to the person paying the same a proper voucher in writing under his hand, describing the name of his office, the port or place at which the dues, fees or other charges are paid, and the name, tonnage and other proper description of the vessel in respect of which the payment is made.

Master to  
report  
arrival.

39. (1) Within twenty-four hours after the arrival within the limits of any port subject to this Act of any vessel liable to the payment of port-dues under this Act the master of the vessel shall report her arrival to the conservator of the port.

(2) A master failing without lawful excuse to make such report within the time aforesaid shall for every such offence be punishable with fine which may extend to one hundred rupees.

(3) Nothing in this section applies to tug-steamers, ferry-steamers or river steamers plying to and from any of the ports subject to this Act or to ballam boats plying to and from the port of Chittagong.

Conservator  
may in  
certain cases  
ascertain  
draught and  
charge  
expense to  
master.

40. If any vessel liable to the payment of port-dues is in any such port without proper marks on the stem and stern posts thereof for denoting her draught, the conservator may cause the same to be ascertained by means of the operation of hooking, and the master of the vessel shall be liable to pay the expense of the operation.

*(Chap. V.—Port-dues, Fees and other Charges.)*

41. In order to ascertain the tonnage of any vessel liable to pay port-dues the following rules shall be observed, namely :—

Ascertainment  
of tonnage of  
vessel liable  
to port-dues.

X of 1841.  
XI of 1850.

(<sup>1</sup>) (a) If the vessel is a British registered vessel or a vessel registered under the Indian Registration of Ships Act, 1841, or the <sup>1</sup>Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law for the time being in force for the registration of vessels in British India, the conservator may require the owner or master of the vessel or any person having possession of her register to produce the register for inspection.

(b) If the owner or master or such person neglects or refuses to produce the register or otherwise to satisfy the conservator as to what is the true tonnage of the vessel in respect of which the port-dues are payable, he shall be punishable with fine which may extend to one hundred rupees, and the conservator may cause the vessel to be measured, and the tonnage thereof to be ascertained, according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels and in such case the owner or master of the vessel shall also be liable to pay the expenses of the measurement.

X of 1841.  
XI of 1850.

(2) If the vessel is not a British registered vessel or a vessel registered under the <sup>1</sup>Indian Registration of Ships Act, 1841, or the <sup>1</sup>Indian Registration of Ships Act (1841) Amendment Act, 1850, or under any other law for the time being in force for the registration of vessels in British India, and the owner or master thereof fails to satisfy the conservator as to what is her true tonnage according to the mode of measurement prescribed by the rules for the time being in force for regulating the measurement of British vessels, the conservator shall cause the vessel to be measured and the tonnage thereof to be ascertained, according to the mode aforesaid, and in such case the owner or master of the vessel shall be liable to pay the expenses of the measurement.

(3) If the vessel is a vessel of which the tonnage cannot be ascertained according to the mode of measurement mentioned in clauses (1) and (2), the tonnage of the vessel shall be determined by the conservator on such an estimate as may seem to him to be just.

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<sup>1</sup> Genl. Acts, Vol. I

## (Chap. V.—Port-dues, Fees and other Charges.)

Distrain and sale or refusal to pay port-charges.

42. If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle, apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid;

and in case any part of the port-dues, fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested, remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the cost including the costs of sale remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

No port-clearance to be granted until port-charges are paid.

43. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such clearance—

- (a) until her owner or master, or some other person, has paid or secured to the satisfaction of such officer the amount of all port-dues, fees and other charges, and of all fines, penalties and expenses to which the vessel or her owner or master is liable under this Act;
- (b) until all expenses, which by the <sup>1</sup>Merchant Shipping Act, 1894, section 207, are to be borne by her owner, incurred since her arrival in the port from which he seeks clearance, have been paid.

57 & 58  
Vict., c. 60.

Port-charges payable in one port recoverable at any other port.

44. (1) If the master of any vessel in respect of which any such sum as is mentioned in the last foregoing section is payable causes her to leave any port without having paid the sum, the authority appointed to receive port-dues, fees and other charges at the port under this Act may require in writing the authority appointed to receive port-dues, fees and other charges under this Act at any other port in British India to which she may proceed, or in which she may be, to levy the sum.

(2) The authority to whom the requisition is directed shall proceed to levy such sum in the manner prescribed in section 42, and a certificate purporting to be made by the authority appointed to receive port-dues, fees and other charges at the port where such sum as is mentioned in the last foregoing section became payable, stating the amount payable, shall be sufficient *prima facie* proof of such amount in any proceeding under section 42 and also (in case the amount payable is disputed) in any subsequent proceeding under section 59.

<sup>1</sup>Coil, Stats., Vol. II.

## (Chap. V.—Port-dues, Fees and other Charges.)

45. (1) If the master of a vessel evades the payment of any such sum as is mentioned in section 43, he shall be punishable with fine which may extend to five times the amount of the sum. Penalty for evading payment of port-charges.

(2) In any proceeding before a Magistrate on a prosecution under sub-section (1), any such certificate as is mentioned in section 44, sub-section (2), stating that the master has evaded such payment, shall be sufficient *prima facie* proof of the evasion, unless the master shows to the satisfaction of the Magistrate that the departure of the vessel without payment of the sum was caused by stress of weather, or that there was lawful or reasonable ground for such departure.

(3) Any Magistrate having jurisdiction under this Act in any port to which the vessel may proceed, or in which she may be found, shall be deemed to have jurisdiction in any proceeding under this section.

46 A vessel entering any port subject to this Act (other than a port in Burma) in ballast and not carrying passengers shall be charged with a port-due at a rate to be determined by the Local Government and not exceeding three-fourths of the rate with which she would otherwise be chargeable Port-due on vessels in ballast.

47. When a vessel enters a port subject to this Act, but does not discharge or take in any cargo or passengers therein (with the exception of such unshipment and reshipment as may be necessary for purposes of repair), she shall be charged with a port-due at a rate to be determined by the Local Government and not exceeding half the rate with which she would otherwise be chargeable. Port-due on vessels not discharging or taking in cargo.

48. No port-due shall be chargeable in respect of—

- (a) any pleasure-yacht, or
- (b) any vessel, which having left any port, is compelled to re-enter it by stress of weather or in consequence of having sustained any damage, or
- (c) any vessel which, having entered any port within the territories administered by the Governor of Fort Saint George in Council, leaves it within forty-eight hours without discharging or taking in any passengers or cargo.

Port-dues not to be chargeable in certain cases.

49. (1) The Local Government may, by notification in the local official Gazette, order that there shall be paid in respect of every vessel entering any port subject to this Act, within a reasonable distance of which there is a public hospital or dispensary suitable for the reception or relief of seamen requiring medical aid, such further port-dues not exceeding one anna per ton as the Local Government thinks fit.

Power to impose hospital port-dues.

(Chap. V.—Port-dues, Fees and other Charges. Chap. VI.—Hoisting Signals.)

(2) Such port-dues shall be called hospital port-dues, and the Local Government shall, in making any order under sub-section (1), have regard to any contributions made under section 36, sub-section (5), clause (d).

(3) An order imposing or increasing hospital port-dues shall not take effect till the expiration of sixty days from the day on which the order was published in the local official Gazette

(4) Whenever the Local Government is satisfied that proper provision has been made by the owners or agents of any class of vessels for giving medical aid to the seamen employed on board such class of vessels, or that such provision is unnecessary in the case of any class of vessels, it may, by notification in the local official Gazette, exempt such class of vessels from any payment under this section.

Application  
and account  
of hospital  
port-dues.

50. (1) Hospital port-dues shall be applied, as the Local Government may direct, to the support of any such hospital or dispensary as aforesaid, or otherwise for providing sanitary superintendence and medical aid for the shipping in the port in which they are levied and for the seamen belonging to the vessels therein, whether such seamen are ashore or afloat.

(2) The Local Government shall publish annually in the local official Gazette, as soon after the first day of April as may be, an account, for the past financial year, of the sums received as hospital port-dues at each port where such dues are payable, and of the expenditure charged against those receipts.

(3) Such account shall be published as a supplement to the abstract published under section 36, sub-section (2).

## CHAPTER VI.

### HOISTING SIGNALS.

Master to  
hoist number  
of vessel.

51. (1) The master of every inward or outward bound vessel on arriving within signal distance of any signal-station established within the limits of the river Hooghly, or within the limits of any part of a river or channel leading to a port subject to this Act, shall, on the requisition of the pilot in charge of the vessel, signify the name of the vessel by hoisting the number by which she is known, or by adopting such other means to this end as may be practicable and usual, and shall keep the signal flying until it is answered from the signal-station.

(2) If the master of a vessel arriving as aforesaid offends against sub-section (1) he shall be punishable for every such offence with fine which may extend to one thousand rupees.

Pilot to  
require master  
to hoist num-  
ber.

52. (1) Every pilot in charge of a vessel shall require the number of the vessel to be duly signalled as provided by the last foregoing section.

(Chap. VI.—*Hoisting Signals.* Chap. VII.—*Provisions with respect to Penalties.*)

(2) When, on such requisition from the pilot, the master refuses to hoist the number of a vessel, or to adopt such other means of making her name known as may be practicable and usual, the pilot may, on arrival at the first place of safe anchorage, anchor the vessel and refuse to proceed on his course until the requisition has been complied with.

53. Any pilot in charge of a vessel who disobeys, or abets disobedience to, any of the provisions of this Chapter, shall be punishable with fine which may extend to five hundred rupees for each instance of such disobedience or abetment, and in addition shall be liable to have his authority to act as a pilot withdrawn.

Penalty on pilot disobeying provisions of this Chapter.

## CHAPTER VII.

### PROVISIONS WITH RESPECT TO PENALTIES.

54. If any person disobeys any rule or order which a Local Government has made in pursuance of this Act and for the punishment of disobedience to which express provision has not been made elsewhere in this Act, he shall be punishable for every such offence with fine which may extend to one hundred rupees.

Penalty for disobedience to rules and orders of the Local Government

55. All offences against this Act shall be triable by a Magistrate, and any Magistrate may, by warrant under his hand, cause the amount of any fine imposed upon the owner or master of any vessel, for any offence committed on board of the vessel or in the management thereof or otherwise in relation thereto, whereof the owner or master is convicted, to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Offences how triable, and penalties how recovered.

56. (1) In case of any conviction under this Act, the convicting Magistrate may order the offender to pay the costs of the conviction in addition to any fine or expenses to which he may be liable.

Cost of conviction.

(2) Such costs may be assessed by the Magistrate and may be recovered in the same manner as any fine under this Act.

57. (1) If any dispute arises as to the sum to be paid in any case as expenses or damages under this Act, it shall be determined by a Magistrate upon application made to him for that purpose by either of the disputing parties.

Ascertainment and recovery of expenses and damages payable under this Act.

(2) Whenever any person is liable to pay any sum, not exceeding one thousand rupees, as expenses or damages under this Act, any Magistrate, upon application made to him by the authority to whom the sum is payable, may, in addition to or instead of any other means for enforcing payment, recover the sum as if it were a fine.

(Chap. VII.—Provisions with respect to Penalties, Chap. VIII.—Supplemental Provisions.)

Costs of distress.

58. Whenever any fine, expenses or damages is or are levied under this Act by distress and sale, the costs of the distress and sale may be levied in addition to such fine, expenses or damages, and in the same manner.

Magistrate to determine the amount to be levied in case of dispute.

59. If any dispute arises concerning the amount leviable by any distress or arrest under this Act or the costs payable under the last foregoing section, the person making the distress or using the arrest may detain the goods distrained or arrested, or the proceeds of the sale thereof, until the amount to be levied has been determined by a Magistrate, who, upon application made to him for that purpose, may determine the amount, and award such costs to be paid by either of the parties to the other of them as he thinks reasonable and payment of such costs, if not paid on demand, shall be enforced as if they were a fine.

Jurisdiction over offences beyond local limits of jurisdiction.

60. (1) Any person offending against the provisions of this Act in any port subject to this Act shall be punishable by any Magistrate having jurisdiction over any district or place adjoining the port.

(2) Such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner and to the same extent as if the offence had been committed locally within the limits of his jurisdiction, notwithstanding that the offence may not have been committed locally within such limits, and, in case any such Magistrate exercises the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

Conviction to be quashed on merits only.

61. (1) No conviction, order or judgment of any Magistrate under this Act shall be quashed for error of form or procedure, but only on the merits and it shall not be necessary to state, on the face of the conviction, order or judgment, the evidence on which it proceeds.

(2) If no jurisdiction appears on the face of the conviction, order or judgment, but the depositions taken supply that defect, the conviction, order or judgment shall be aided by what so appears in the depositions

## CHAPTER VIII.

### SUPPLEMENTAL PROVISIONS.

Hoisting unlawful colours in port.

62. (1) If any vessel belonging to any of His Majesty's subjects, or sailing under British colours, hoists, carries or wears, within the limits of any port subject to this Act, any flag, jack, pennant or colours, the use whereof on board such vessel has been prohibited by the<sup>1</sup> Merchant Shipping Act, 1894, or any other Statute now or hereafter to be in force, or by any proclamation made or to be made in pursuance of any such Statute, or by any of His Majesty's regulations in force for the time being, the master of the vessel

57 & 58 Vict.,  
c. 60.

<sup>1</sup> Coll. Stats., Vol. II.

*(Chap. VIII—Supplemental Provisions.)*

shall, for every such offence, be punishable with fine which may extend to fifty rupees.

(2) Such fine shall be in addition to any other penalty recoverable in respect of such an offence.

(3) The conservator of the port, or any officer of His Majesty's Navy or Indian Marine Service, may enter on board any such vessel and seize and take away any flag, jack, pennant or colours so unlawfully hoisted, carried or worn on board the same.

57 & 58 Vict.,  
c. 60. 63. Any Magistrate, upon an application being made to him by the Consul of any foreign Power to which section 238 of the <sup>1</sup>Merchant Shipping Act, 1894, has by an Order in Council been or shall hereafter be, declared to be applicable, or by the representative of such Consul, and upon complaint on oath of the desertion of any seaman, not being a slave, from any vessel of such foreign Power, may, until a revocation of such Order in Council has been publicly notified, issue his warrant for the apprehension of any such deserter, and upon due proof of the desertion, may order him to be conveyed on board the vessel to which he belongs, or, at the instance of the Consul, to be detained in custody until the vessel is ready to sail, or, if the vessel has sailed, for a reasonable time not exceeding one month :

Foreign de-  
serters.

Provided that a deposit be first made of such sum as the Magistrate deem necessary for the subsistence of the deserter during the desertion and that the detention of the deserter shall not be continued beyond twelve weeks.

64. (1) The provisions of sections 10 and 21 shall be applicable to all ports heretofore or hereafter declared by the Local Government to be ports for the shipment and landing of goods but not otherwise subject to this Act, and may be enforced by any Magistrate to whose ordinary jurisdiction any such port is subject.

Application  
of sections 10  
and 21.

(2) Any penalties imposed by him, and any expenses incurred by his order, under the said provisions shall be recoverable respectively in the manner provided in sections 55 and 57.

(3) In any of the said ports for the shipment and landing of goods the consent referred to in section 21, sub-section (4), may be given by the principal officer of customs at such port or by any other officer appointed in that behalf by the Local Government.

65. Any local authority in which any immoveable property in or near a port is vested may, with the previous sanction of the Local Government, appropriate and either retain and apply, or transfer by way of gift or otherwise, the whole or any part of the property as a site for, or for use as, a sailors' home or other institution for the health, recreation and temporal well-being of sailors.

Grant of sites  
for sailors'  
institutes.

<sup>1</sup> Coll. Stats., Vol. II.



(Chap. VIII.—Supplemental Provisions. The First Schedule. Ports,  
Vessels chargeable, Rate of Port-dues and Frequency of payment.)

Exercise of  
powers of  
conservator  
by his assis-  
tants.

66. (1) All acts, orders or directions by this Act authorized to be done or given by any conservator may, subject to his control, be done or given by any harbour-master or any deputy or assistant of such conservator or harbour-master.

(2) Any person authorised by this Act to do any act may call to his aid such assistance as may be necessary.

Service of  
written noti-  
ces of direc-  
tions.

67. Any written notice of a direction given under this Act, left for the master of any vessel with any person employed on board thereof, or affixed on a conspicuous place on board of the vessel, shall, for the purposes of this Act, be deemed to have been given to the master thereof.

Publication  
of orders of  
Local Govern-  
ment.

68. Every declaration, order and rule of a Local Government made in pursuance of this Act shall be published in the local official Gazette, and a copy thereof shall be kept in the office of the conservator and at the custom-house, if any, of every port to which the declaration, order or rule relates, and shall there be open at all reasonable times to the inspection of any person without payment of any fee.

Repeal.

69. The enactments mentioned in the second schedule are hereby repealed to the extent specified in the fourth column of that schedule.

THE FIRST SCHEDULE.

PORTS, VESSELS CHARGEABLE, RATE OF PORT-DUES AND FREQUENCY OF  
PAYMENT.

(See sections 1 and 33.)

PART I.—BENGAL.

Name of port.	Vessels chargeable.	Rate of port-dues	Due how often chargeable in respect of same vessel.
1	2	3	4
Calcutta . . .	Sea-going vessels of twenty tons and upwards.	Not exceeding four annas per ton : provided that in the case of <i>dhows</i> and country vessels employed in the coasting trade, the rate shall be one-half the rate chargeable in respect of other vessels.	Whenever the vessel enters the port, except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days.
	Tug-steamers and river steamers	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE—*contd.*PART I.—BENGAL—*contd.*

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Cuttack Ports,—namely, False Point and Pooree.	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton	Whenever the vessel enters any one of the ports except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days
Balasore Ports,—namely, Balasore, Churaman, Laichunpur, Chanua, Subarnarekha, Dhamra (Chandbally), and Sartha.	Ditto . .	Ditto . .	Whenever the vessel enters any one of the ports, except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in thirty days.

## PART II.—MADRAS PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
		<i>Foreign Vessels.</i>	
Madras . .	Sea-going vessels of fifteen tons and upwards	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements or Ceylon calling at Madras, not exceeding four annas a ton	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again.
		(b) In the case of any other foreign ship or steamer calling at Madras, not exceeding four annas a ton.	The due is payable on each entry into the port.
		<i>Coasting Vessels.</i>	
		(c) In the case of a coasting ship calling at Madras, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again.
		(d) In the case of a coasting steamer calling at Madras, not exceeding three annas a ton.	The due is payable once in thirty days.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE—*contd.*

PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4	
<i>Eastern Group.</i>			<i>Foreign Vessels.</i>	
Dis- trict.	Port.			
Gan- jam.	1. Gopalpur . . .	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	2. Baruva . . .		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	3. Calingapatam . . .		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
Vizaga- patam.	4. Bimlipatam . . .		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	5. Vizagapatam . . .		<i>Coasting Vessels.</i>	
Goda- vari.	6. Cocanada . . .		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	7. Coringa . . .		(f) In the case of a coasting steamer, calling at one or more ports in the Eastern group not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
Kistna.	{ 8. Narasapur }			
	{ 9. Peupalem }			
	10. Masulipatam . . .			
	11. Nagayalanka . . .			
	12. Kottapalem . . .			
Guntur.	13. Moratata . . .			
	14. Gangadipalem . . .			
	15. Nizampatnam . . .			
	16. Ipurupalem . . .			
	17. Motupalle . . .			
	18. Kottapatnam . . .			

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE —*contd.*PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4	
<i>Eastern Group—contd.</i>				
District.	Port.		<i>Foreign Vessels.</i>	
Nellore.	19. Iskapalle . . .	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
Chingleput	20. Covelong . . .		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
South Arcot.	21. Cuddalore . . .		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	22. Porto Novo . . .			
	23. Thandavarayasola ganpettar. <sup>1</sup>			
Tanjore.	24. Tirumalavasal . . .		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	25. Tranquebar . . .			
	26. Nagore . . .			
	27. Negapatam . . .			
	28. Velankani . . .		<i>Coasting Vessels.</i>	
	29. Topputurai . . .			
	30. Point Calimere . . .		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	31. Mutupet . . .			
	32. Adirampatnam . . .		(f) In the case of a coasting steamer calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	33. Gopalapatnam . . .			
	34. Kettumavadi . . .			
	35. Krishnajiapatnam . . .			
	36. Ammapatnam . . .			
	37. Kottaiapatnam . . .			
	38. Sundarapaudiya-patnam . . .			

<sup>1</sup> The Act has been withdrawn from this port, see Fort St. George Gazette, 1909, Pt. I, p. 257.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE—*contd.*

PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
Eastern Group—concl.		Foreign Vessels.		
Dis- trict.	Port.			
Madura.	{ 39. Vattanam }	Scag- ging vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Eastern group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	{ 40. Tondi }		(b) In the case of any other foreign ship or steamer calling at any one port in the Eastern group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	{ 41. Pudupatnam }		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	{ 42. Karangadu }		(d) In the case of any other foreign ship or steamer calling at more than one port in the Eastern group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	{ 43. Tiruppalankudi }		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
	{ 44. Devipatnam }		(f) In the case of a coasting steamer, calling at one or more ports in the Eastern group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.
	{ 45. Mudiyanpatnam }			
	{ 46. Alagayankolam }			
	{ 47. Attankarai }			
	{ 48. Emanangundu }			
	{ 49. Pamban }			
	{ 50. Ramesvaram }			
	{ 51. Mandapam }			
	{ 52. Vedalai }			
	{ 53. Muttupettai }			
Tinne- vely.	{ 54. Kilakarai }			
	{ 55. Ervadi }			
	{ 56. Valinokkam }			
	{ 57. Vembar }			
	{ 58. Vaippar }			
	59. Tuticorin			
	60. Ovary			
	61. Kayalpatnam			
	62. Kulasekharapatnam			

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE—*contd.*  
PART II.—MADRAS PRESIDENCY—*contd.*

Name of port.		Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Western Group.</i>			<i>Foreign Vessels.</i>	
District.	Port.		(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	63. Cochin . . .		(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	64. Chavakad . . .		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	{ 65. Velivangod } .			
	{ 66. Ponani } .			
	{ 67. Kuttayi } .			
	{ 68. Parapanna } .			
	{ 69. Tanur } .			
	{ 70. Parpanangadi } .			
	{ 71. Ferokeh } .		(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	{ 72. Beypore } .			
	{ 73. Calicut } .			
	{ 74. Kappatta } .			
	{ 75. Quilandi } .			
	{ 76. Kottakkal } .			
	{ 77. Badagara } .			
	{ 78. Muttankal } .			
	{ 79. Chompayi } .			
	{ 80. Kallayi } .			
	{ 81. Talayi } .			
	82. Tellicherry . .			
	83. Cannanore . . .			
	{ 84. Pudiyangadi } .			
	{ 85. Azhikal } .			
	{ 86. Ettikulam } .			
	{ 87. Kavvayi } .			
		Sea-going vessels of fifteen tons and upwards.	<i>Coasting Vessels.</i>	
			(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port.
			(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE—*contd.*

PART II—MADRAS PRESIDENCY—*concl'd.*

Name of port.		Vessels chargeable.	Rate of port-dues	Due how often chargeable in respect of same vessel.
1		2	3	4
Western Group—contd.				
Dis-trict.	Port.		Foreign Vessels.	
South Canara.	{ 88. Hosdrug . }	Sea-going vessels of fifteen tons and upwards.	(a) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at any one port in the Western group, not exceeding three annas a ton.	The payment of the due at the port will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that port.
	{ 89. Baikal }			
	{ 90. Kasaragod }			
	91. Kumbale .			
	92. Manjesvara .		(b) In the case of any other foreign ship or steamer calling at any one port in the Western group, not exceeding three annas a ton.	The due is payable on each entry into the port.
	93. Mangalore .			
	{ 94. Mulki . }			
	{ 95. Padubidri . }			
	{ 96. Ermala }		(c) In the case of a foreign ship or steamer, engaged in trade with the Straits Settlements, calling at more than one port in the Western group, not exceeding four and a half annas a ton	The payment of the due at the first port called at in the group will exempt the ship or steamer for a period of sixty days from liability to pay the due again at that or any other port in the group.
	97. Uchhila .			
	98. Kaph .			
{ 99. Malpe . }				
	100. Hangarakatta or Barkur.			
	101. Coondapoor .			
			Contd. on next page.	Contd. on next page.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE—*contd.*

PART II.—MADRAS PRESIDENCY—*concl'd.*

Name of port.		Vessels chargeable.	Rate of port-dues	Due how often chargeable in respect of same vessel.
1		2	3	4
<i>Western Group—concl'd.</i>				
Dis- trict.	Port.		<i>Foreign Vessels—cont'd.</i>	
South Canara.— <i>cont'd.</i>	{ 102. Nyakinakatte (Nayakkankottai.)	{ Sea-going vessels of fifteen tons and upwards.	(d) In the case of any other foreign ship or steamer calling at more than one port in the Western group, not exceeding four and a half annas a ton.	The due is payable once for the voyage.
	{ 103 Baindur . . .		<i>Coasting Vessels.</i>	
	{ 104. Siruru . . .		(e) In the case of a coasting ship calling at any port, not exceeding one and a half annas a ton.	The payment of the due at the port will exempt the ship for a period of sixty days from liability to pay the due again at that port
			(f) In the case of a coasting steamer calling at one or more ports in the Western group, not exceeding three annas a ton.	The payment of the due at the first port called at in the group will exempt the steamer for a period of thirty days from liability to pay the due again at that or any other port in the group

*Explanations to Part II of the First Schedule.*

*Explanation 1.*—In this Part of the schedule—

(a) “ship” means a sailing vessel, and “steamer” a steam-vessel;

(b) “coasting ship” or “coasting steamer” means respectively a ship or steamer which at any port discharges cargo exclusively from, or takes in cargo exclusively for, any port in the island of Ceylon or any part of India, between the westernmost part of Sind and the south-easternmost part of Burma; and “coasting steamer” includes a coasting steam-vessel having a general pass under section 164 of the Sea Customs Act, 1878;

(c) “foreign ship” or “foreign steamer” means respectively a ship or steamer not being a coasting ship or coasting steamer;

Provided that, for the purpose of the levy of port-dues, a vessel shall not be deemed, during one and the same voyage, to be both a coasting ship or steamer and a foreign ship or steamer, but port-dues shall, in respect of such voyage, be leviable on such vessel either as a coasting or as a foreign ship or steamer, whichever rate is the higher.

*Explanation 2.*—Ports enclosed in double brackets in the first column of the schedule shall be treated as if they were only one part; every vessel in respect of which such dues have been charged and taken at one of the bracketted ports being exempted from the payment of port-dues on entering another port bracketted with it within the period specified in the fourth column of the schedule.

VIII of 1878.



(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

THE FIRST SCHEDULE—*contd.*

PART III.—BOMBAY PRESIDENCY.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Bombay . . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding four annas per ton.	Once in the same month.
	Tug-steamers, ferry-steamers and river-steamers.	Ditto	Once between the 1st January and the 30th June, and once between the 1st July and 31st December, in each year.
<i>Northern Group of</i>			
Goga . . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs and an addition of one-half of such highest rate	Once in thirty days at the same port : provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Dhole a ( <i>Whittle Bandar</i> ).			
3. Tankari . . .			
4. Dehegam . . .			
5. Kavi . . .			
6. Dehej . . .			
7. Broach . . .			
8. Bhagwa . . .			
9. Surat . . .			
10. Matwad . . .			
11. Balsar . . .			
12. Umarsadi . . .			
13. Kolak . . .			
14. Kalai . . .			
15. Maroli . . .			
16. Umbargam . . .			
17. Gholwad . . .			
18. Dahanu Creek . . .			
19. Tarapur . . .			
20. Olivara Navapur . . .			
21. Satpati Creek . . .			
22. Mahim (Kelva) ...			
23. Kelva . . .			
24. Dantiora . . .			
25. Arnala . . .			

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

## THE FIRST SCHEDULE—contd.

## PART III.—BOMBAY PRESIDENCY—contd.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
<i>Southern Group of Ports.</i>			
1. Bandra . . .	Sea going vessels of ten tons and upwards (except fishing-boats).	Not exceeding three annas per ton : provided that a coasting steamer whenever it enters any port may be charged at a rate to be determined by the Local Government and not exceeding the highest rate of port-dues leviable at any port of the group to which such port belongs, and an addition of one-half of such highest rate.	Once in thirty days at the same port : provided that no coasting vessel or coasting steamer, having paid port-dues at any port, shall be chargeable with port-dues again at the same or any other port of the same group within thirty days.
2. Vesava . . .			
3. Manori . . .			
4. Utan . . .			
5. Bossein . . .			
6. Bhiwandi . . .			
7. Kalyan . . .			
8. Thana . . .			
9. Mahul . . .			
10. Trombay . . .			
11. Panwel . . .			
12. Mora . . .			
13. Karanja . . .			
14. Thal . . .			
15. Alibag . . .			
16. Revdanda . . .			
17. Mandad . . .			
18. Bankot . . .			
19. Kelshi . . .			
20. Harnai . . .			
21. Dabhoi . . .			
22. Borya . . .			
23. Jaygad . . .			
24. Varavda . . .			
25. Ratnagiri . . .			
26. Purangad . . .			
27. Jaytapur . . .			
28. Vijaydurg . . .			
29. Devgad . . .			
30. Achra . . .			
31. Malwan . . .			
32. Nivti . . .			
33. Vengurla . . .			
34. Redi . . .			
35. Kirnapani . . .			
36. Tilmati . . .			
37. Sadashivgad . . .			
38. Karwar, including Baitkhol . . .			
39. Bingi . . .			
40. Chendya . . .			
41. Belikeri . . .			
42. Ankola . . .			
43. Gangavali . . .			
44. Tadri . . .			
45. Kumpta . . .			
46. Honawar . . .			
47. Manki . . .			
48. Murdeshwar . . .			
49. Shirali . . .			
50. Bhatkal . . .			

(The First Schedule.--Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

PART III.—BOMBAY PRESIDENCY—concl<sup>d</sup>.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Karachi . . .	Sea-going vessels of ten tons and upwards (except fishing-boats).	Not exceeding four annas per ton.	Once in three months.
	Tug-steamers and river-steamers.	Ditto . . .	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Aden . . .	Sea-going vessels of ten tons and upwards.	Not exceeding three annas per ton.	Once a month.

PART IV.—BURMA.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
Rangoon	Sea-going vessels of ten tons and upwards	Not exceeding six annas per ton.	Once in sixty days.
	Tug-steamers and river-steamers.	Not exceeding four annas per ton.	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December, in each year.
Maulmein	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Not exceeding four annas per ton.	Once in sixty days.
	Sea-going vessels of twenty-five tons and upwards.	Not exceeding five annas six pies per ton.	Ditto.

(The First Schedule.—Ports, Vessels chargeable, Rate of Port-dues and Frequency of Payment.)

## THE FIRST SCHEDULE—concl'd.

## PART IV.—BURMA—cont'd.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2		4
Kyaukpyn . . .	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Once in sixty days.
Akyab . . .	Ditto ditto . . .	Ditto . . .	Ditto.
Bassein . . .	Sea-going vessels of ten tons and upwards, but less than twenty-five tons.	Ditto . . .	Ditto.
	Sea-going vessels of twenty-five tons and upwards	Not exceeding five annas six pies per ton	Ditto.
Tavoy . . .	Sea-going vessels of ten tons and upwards.	Not exceeding four annas per ton.	Ditto.
Mergui . . .	Ditto . . .	Ditto . . .	Ditto.

## PART V.—EASTERN BENGAL AND ASSAM.

Name of port.	Vessels chargeable.	Rate of port-dues.	Due how often chargeable in respect of same vessel.
1	2	3	4
Chittagong . . .	Sea-going vessels of ten tons and upwards, not being ballam-boats.	Not exceeding four and a half annas per ton.	Whenever the vessel enters the port, except in the case of mail-steamers and coasting-vessels, which shall not be chargeable more than once in sixty days.
	Tug-steamers and river-steamers.	Ditto . . .	Once between the 1st January and the 30th June, and once between the 1st July and the 31st December. h year.
	Ballam-boats . . .	Not exceeding one anna per ton.	Whenever the vessel enters the port.

(The Second Schedule.—Enactments repealed.)

## THE SECOND SCHEDULE.

## ENACTMENTS REPEALED.

(See section 69.)

Year.	No.	Short title or subject.	Extent of repeal.
1889 . . .	X	The Indian Ports Act, 1889 . . .	So much as is unrepealed.
1891 . . .	V	The Indian Ports Act, 1891 . . .	The whole.
1894 . . .	II	The Indian Ports Act (1889) Amendment Act, 1894.	Ditto.
1896 . . .	IV	The Indian Ports Act (1889) Amendment Act, 1896.	Ditto.
1901 . . .	III	The Indian Ports Act, 1901 . . .	Ditto.
1903 . . .	V	The Indian Ports (Amendment) Act, 1903.	Ditto.

## THE INDIAN REGISTRATION ACT, 1908.

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THE SCHEDULE.—REPEAL OF ENACTMENTS.

ACT No. XVI OF 1908.<sup>1</sup>

[18th December, 1908.]

An Act to consolidate the enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Indian Registration Act, 1908.

(2) It extends to the whole of British India, except such districts or tracts of country as the Local Government may, with the previous sanction of the Governor General in Council,<sup>2</sup> exclude from its operation.

(3) It shall come into force on the first day of January, 1909.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) “addition” means the place of residence, and the profession, trade, rank and title (if any) of a person described, and in the case of a Native of India, his caste (if any) and his father’s name, or where he is usually described as the son of his mother, then his mother’s name :

(2) “book” includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

(3) “district” and “sub-district” respectively mean a district and sub-district formed under this Act :

(4) “District Court” includes the High Court in its ordinary original civil jurisdiction :

(5) “endorsement” and “endorsed” include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

(6) “immoveable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass :

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 325 ; for Report of Select Committee, *see* *ibid.*, 1908, Pt. V, p. 387 and for Proceedings in Council, *see* *ibid.*, 1908, Pt. VI, pp. 148, 154 and 182.

<sup>2</sup> For notification excluding Upper Burma from the operation of the Act, *see* Burma Gazette, 1908, Pt. I, p. 875.

## (Part II.—Of the Registration-establishment.)

(7) “lease” includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease :

(8) “minor” means a person who, according to the personal law to which he is subject, has not attained majority :

(9) “moveable property” includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property : and

(10) “representative” includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot.

## PART II.

## OF THE REGISTRATION-ESTABLISHMENT.

3. (1) The Local Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government :

Inspector-General of Registration.

Provided that the Local Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government appoints in this behalf.

(2) Any Inspector-General may hold simultaneously any other office under Government.

4. (1) The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred.

Branch Inspector-General of Sindh.

(2) The Branch Inspector-General of Sindh may hold simultaneously any other office under Government.

5 (1) For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may alter, the limits of such districts and sub-districts.

Districts and sub-districts.

(2) The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.

Registrars and Sub-Registrars.

*(Part II.—Of the Registration-establishment.)*

Offices of  
Registrar  
and Sub-  
Registrar.

7. (1) The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.

(2) The Local Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

Inspectors of  
Registration-  
offices.

8. (1) The Local Government may also appoint officers, to be called Inspectors of Registration-offices, and may prescribe the duties of such officers.

(2) Every such Inspector shall be subordinate to the Inspector-General.

Military  
cantonments  
may be  
declared  
sub-districts  
or districts.

9 Every military cantonment may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and the Cantonment Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be.

Absence of  
Registrar or  
vacancy in  
his office.

10. (1) When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, shall be the Registrar during such absence or until the Local Government fills up the vacancy.

(2) When the Registrar of a district including a Presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector-General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of  
Registrar on  
duty in his  
district.

11. When any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar except those mentioned in sections 68 and 72.

Absence of  
Sub-Registrar  
or vacancy in  
his office.

12. When any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

(Part II.—Of the Registration-establishment. Part III.—Of Registrable Documents.)

13. (1) All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector-General.
- (2) Such report shall be either special or general, as the Local Government directs.
- (3) The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.
14. (1) Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.
- (2) The Local Government may allow proper establishments for the several offices under this Act.
15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—“ The seal of the Registrar (or of the Sub-Registrar) of .”
- 16 (1) The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.
- (2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.
- (3) The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such districts.

Report to certain appointments and suspension and removal and dismissal of officers.

Remuneration and establishments of registering officers.

Seal of registering officers.

Register books and fire-proof boxes.

### PART III.

#### OF REGISTRABLE DOCUMENTS.

17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :—

Documents of which registration is compulsory.

- (a) instruments of gift of immoveable property ;

XX of 1866.  
VIII of 1871.  
III of 1877.

*(Part III—Of Registrable Documents.)*

- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immoveable property ;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ; and
- (d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the local official Gazette, exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

- (i) any composition deed ; or
- (ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property ; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures ; or
- (iv) any endorsement upon or transfer of any debenture issued by any such Company ; or
- (v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest ; or
- (vi) any decree or order of a Court and any award ; or
- (vii) any grant of immoveable property by Government , or

## (Part III.—Of Registrable Documents)

XXVI of  
1871.  
XIX of 1883.  
XII of 1884.

- (viii) any instrument of partition made by a Revenue-officer ; or
  - (ix) any order granting a loan or instrument of collateral security granted under the <sup>1</sup>Land Improvement Act, 1871, or the <sup>2</sup>Land Improvement Loans Act, 1883, or
  - (x) any order granting a loan under the <sup>2</sup>Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act ; or
  - (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage ; or
  - (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.
- (3) Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered

18. Any of the following documents may be registered under this Act, namely :—

Documents  
of which  
registration  
is optional.

- (a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property ;
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ;
- (c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 ;
- (d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property ;
- (e) wills ; and
- (f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents in  
language not  
understood  
by registering  
officer.

<sup>1</sup> Genl. Acts, Vol. I.    <sup>2</sup> Genl. Acts, Vol. III.



## (Part III.—Of Registrable Documents. Part IV.—Of the Time of Presentation.)

Documents containing interlineations, blanks, erasures or alterations.

20. (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Description of property and maps or plans.

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Description of houses and land by reference to Government maps or surveys.

22. (1) Where it is, in the opinion of the Local Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described.

(2) Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of section 21, sub-section (2) or sub-section (3), shall not desentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property.

## PART IV.

### OF THE TIME OF PRESENTATION.

Time for presenting documents.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented

(Part IV.—Of the Time of Presentation. Part V.—Of the Place of Registration.)

for that purpose to the proper officer within four months from the date of its execution :

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Documents executed by several persons at different times.

25. (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.

Provision where delay in presentation is unavoidable.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

26. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

Documents executed out of British India.

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

Wills may be presented or deposited at any time.

## PART V.

### OF THE PLACE OF REGISTRATION.

28. Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Place for registering documents relating to land.

(Part V.—Of the Place of Registration. Part VI.—Of Presenting Documents for Registration.)

Place for registering other documents.

29. (1) Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered.

(2) A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

Registration by Registrars in certain cases.

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

(2) The Registrar of a district including a Presidency-town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates

Registration or acceptance for deposit at private residence.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit :

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

## PART VI.

### OF PRESENTING DOCUMENTS FOR REGISTRATION.

Persons to present documents for registration.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

- (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order or
- (b) by the representative or assign of such person, or
- (c) by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

*(Part VI.—Of Presenting Documents for Registration.)*

33. (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely :—

Powers-of-attorney recognizable for purposes of section 32.

- (a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides ;
- (b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate.
- (c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of His Majesty or of the Government of India :

Provided that the following persons shall not be required to attend a any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely :—

- (i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;
- (ii) persons who are in jail under civil or criminal process ; and
- (iii) persons exempt by law from personal appearance in Court.

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf

34. (1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives,

Enquiry before registration by registering officer.

*(Part VI.—Of Presenting Documents for Registration.)*

assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed ;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document ; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders

Procedure on admission and denial of execution respectively.

**35** (1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(Part VII.—Of Enforcing the Appearance of Executants and Witnesses.)

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead :

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII.

## PART VII.

### OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. If any person presenting any document for registration or claiming under any document, which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned and at a time named therein.

Procedure where appearance of executant or witness is desired.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the persons whose appearance is so required.

Officer or Court to issue and cause service of summons.

38. (1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration office, or

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration-office.

Persons exempt from appearance at registration-office.

shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts, shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued and any person summoned to appear under the provisions of this Act.

Law as to summonses, commissions and witnesses.

(Part VIII.—Of Presenting Wills and Authorities to adopt. Part IX.—  
Of the Deposit of Wills.)

## PART VIII.

### OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

Persons entitled to present wills and authorities to adopt.

40. (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Registration of wills and authorities to adopt.

41. (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be,

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

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## PART IX.

### OF THE DEPOSIT OF WILLS.

Depo it of wills.

42. Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document.

Procedure on deposit of wills.

43. (1) On receiving such cover, the Registrar if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.

(Part IX.—Of the Deposit of Wills Part X.—Of the Effects of Registration and Non-registration.)

44. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly.

Withdrawal of sealed cover deposited under section 42.

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

Proceedings on death of depositor.

(2) When such copy has been made, the Registrar shall re-deposit the original will.

46. (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the <sup>1</sup>Indian Succession Act, 1865, or of section 81 of the <sup>2</sup>Probate and Administration Act, 1881, or the power of any Court by order to compel the production of any will.

Saving of certain enactments and powers of Courts

X of 1865.  
V of 1881.

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

## PART X.

### OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Time from which registered document operates.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Registered documents relating to property when to take effect against oral agreements.

49. No document required by section 17 to be registered shall—

(a) affect any immoveable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered.

Effect of non-registration of documents required to be registered.

<sup>1</sup> Genl. Acts, Vol. I. <sup>2</sup> Genl. Acts, Vol. II.



(Part X.—Of the Effects of Registration and Non-registration. Part XI.—  
Of the Duties and Powers of Registering Officers.)

Certain registered documents relating to land, to take effect against unregistered documents.

50. (1) Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

(2) Nothing in sub-section (1) applies to leases exempted under the proviso to sub-section (1) of section 17 or to any document mentioned in sub-section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act.

*Explanation.*—In cases where Act No. XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act.

XX of 1866.

VIII of 1871.  
III of 1877.

## PART XI.

### OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A) *As to the Register-books and Indexes.*

Register-books to be kept in the several offices.

51. (1) The following books shall be kept in the several offices hereinafter named, namely :—

A—In all registration offices—

Book 1, “Register of non-testamentary documents relating to immoveable property ;”

Book 2, “Record of reasons for refusal to register ;”

Book 3, “Register of wills and authorities to adopt ;” and

Book 4, “Miscellaneous Register ;”

B - In the offices of Registrars—

Book 5, “Register of deposits of wills.”

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immoveable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immoveable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

52. (1) (a) The day, hour and place of presentation, and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;

Duties of registering officers when document presented.

(b) a receipt for such document shall be given by the registering officer to the person presenting the same; and,

(c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission.

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General.

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Entries to be numbered consecutively.

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of, the document to which it relates.

Current indexes and entries therein.

55. (1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No. I, Index No. II, Index No. III and Index No. IV.

Indexes to be made by registering officers, and their contents.

(2) Index No. I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No. 1.

(3) Index No. II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector-General from time to time directs in that behalf.

(4) Index No. III shall contain the names and additions of all persons executing every will and authority entered in Book No. 3, and of the executors and persons respectively appointed thereunder, and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same.

(5) Index No. IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No. 4.

(6) Each Index shall contain such other particulars, and shall be prepared in such form as the Inspector General from time to time directs.

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar and filed.

Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

56. (1) Every Sub-Registrar shall send to the Registrar to whom he is subordinate, at such intervals as the Inspector-General from time to time directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos I, II and III.

(2) Every Registrar receiving such copy shall file it in his office.

57. (1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same ; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

*(B) As to the Procedure on admitting to Registration.*

Particulars to be endorsed on documents admitted to registration.

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under section 89, there shall be endorsed from time to time the following particulars, namely :—

- (a) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent ;
- (b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act ; and
- (c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

Endorsements to be dated and signed by registering officer.

60. (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Certificate of registration.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59, have occurred as therein mentioned.

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

Endorsements and certificate to be copied and document returned.

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office.

Procedure on presenting document in language unknown to registering officer.

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

63. (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

Power to administer oaths and record of substance of statements.

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

*(C) Special Duties of Sub-Registrar.*

Procedure  
where docu-  
ment relates  
to land in  
several sub-  
districts.

64. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure  
where docu-  
ment relates  
to land in  
several  
districts.

65. (1) Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

(2) The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any) and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate : and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

*(D) Special Duties of Registrar.*

Procedure  
after registra-  
tion of docu-  
ments relating  
to land.

66. (1) On registering any non-testamentary document relating to immoveable property the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

*(Part XI.—Of the Duties and Powers of Registering Officers.)*

67. On any document being registered under section 30, sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub-section (1).

Procedure after registration under section 30, sub-section (2).

*(E) Of the controlling Powers of Registrars and Inspectors-General.*

68. (1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Power of Registrars to superintend and control Sub-Registrars.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered.

69. (1) The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

Power of Inspector-General to superintend registration offices and make rules.

- (a) providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept ;
- (b) declaring what languages shall be deemed to be commonly used in each district ;
- (c) declaring what territorial divisions shall be recognized under section 21 ;
- (d) regulating the amount of fines imposed under sections 25 and 34, respectively ;
- (e) regulating the exercise of the discretion reposed in the registering officer by section 63 ;
- (f) regulating the form in which registering officers are to make memoranda of documents ;
- (g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;
- (h) declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively ;
- (i) declaring the holidays that shall be observed in the registration-offices ; and,
- (j) generally, regulating the proceedings of the Registrars and Sub-Registrars.

(Part XI.—Of the Duties and Powers of Registering Officers. Part  
XII.—Of Refusal to Register.)

(2) The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette, and on publication shall have effect as if enacted in this Act.

Power of  
Inspector-  
General to  
remit fines.

70. The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee.

## PART XII.

### OF REFUSAL TO REGISTER.

Reasons for  
refusal to  
register to be  
recorded.

71. (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his book No. 2 and endorse the words "registration refused" on the document; and on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

Appeal to  
Registrar  
from orders of  
Sub-Registrar  
refusing  
registration  
on ground  
other than  
denial of  
execution.

72. (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

Application  
to Registrar  
where Sub-  
Registrar  
refuses to  
register on  
ground of  
denial of  
execution.

73. (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

*(Part XII.—Of Refusal to Register.)*

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, the Registrar shall as soon as conveniently may be, enquire—

Procedure of Registrar on such application.

(a) whether the document has been executed ;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

75. (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

Order by Registrar to register and procedure thereon

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

(3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the

V of 1908.

<sup>1</sup> Code of Civil Procedure, 1908.

76. (1) Every Registrar refusing—

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

Order of refusal by Registrar.

(b) to direct the registration of a document under section 72 or section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or section 72.

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<sup>1</sup> *Supra.*



(Part XII.—Of Refusal to Register. Part XIII.—Of the Fees for Registration, Searches and Copies.)

Suit in case  
of order of  
refusal by  
Registrar.

77. (1) Where the Registrar refuses to order the document to be registered, under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

### PART XIII.

#### OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES

Fees to be  
fixed by Local  
Government.

78. Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees payable—

- (a) for the registration of documents ;
- (b) for searching the registers ;
- (c) for making or granting copies of reasons, entries or documents, before, on or after registration ;

and of extra or additional fees payable—

- (d) for every registration under section 30 ;
- (e) for the issue of commissions ;
- (f) for filing translations ;
- (g) for attending at private residences ;
- (h) for the safe custody and return of documents ; and
- (i) for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Publication  
of fees.

79. A table of the fees so payable shall be published in the official Gazette and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office.

Fees payable  
on presenta-  
tion.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

## PART XIV.

## OF PENALTIES.

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause, injury as defined in the <sup>1</sup>Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure

82. Whoever—

- (a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or
- (b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or
- (c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or
- (d) abets anything made punishable by this Act;

Penalty for making false statements, delivering false copies or transactions, false personation, and abetment

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

Registering officer may commence prosecutions.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the <sup>1</sup>Indian Penal Code.

Registering officers to be deemed public servants.

(2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

<sup>1</sup> Genl. Acts, Vol. I.

## (Part XV.—Miscellaneous.)

(3) In section 228 of the <sup>1</sup>Indian Penal Code, the words “judicial proceeding” shall be deemed to include any proceeding under this Act. XLV of 1860.

## PART XV.

## MISCELLANEOUS.

Destruction of unclaimed documents. Registering officer not liable for thing *bonâ fide* done or refused in his official capacity.

Nothing so done invalidated by defect in appointment or procedure. Registration of documents executed by Government officers or certain public functionaries.

85. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.

86. No registering officer shall be liable to any suit, claim or demand by reason of any thing in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras or Bombay, or for any Official Trustee or Official Assignee or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

Copies of certain orders, certificates and instruments to be sent to registering officers and filed.

89. (1) Every officer granting a loan under the <sup>2</sup>Land Improvement Loans Act, 1883, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. 1. XIX of 1883.

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1. V of 1908.

<sup>1</sup> Genl. Acts, Vol. I.

<sup>2</sup> Genl. Acts, Vol. III.

<sup>3</sup> *Supra*.

XII of 1884.

(5) Every officer granting a loan under the <sup>1</sup>Agriculturists' Loans Act, 1884, shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1.

(4) Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

*Exemptions from Act.*

III of 1877.  
VIII of 1871.

90. (1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps, namely :—

Exemption of certain documents executed by or in favour of Government.

- (a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement ; or
- (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey ; or
- (c) documents which, under any law for the time being in force, are filed periodically in any revenue-office by patwaris or other officers charged with the preparation of village-records ; or
- (d) sanads, inam title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land ; or
- (e) notices given under section 74 or section 76 of the <sup>2</sup>Bombay Land-revenue Code, 1879, of relinquishment of occupancy by occupants or of alienated land by holders of such land.

Bom. V of  
1879.

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

<sup>1</sup> Genl. Acts, Vol. III.

<sup>2</sup> Bom. Code, Vol. II.

(Part XV.—Miscellaneous. The First Schedule.—Repeal of Enactments.)

Inspection  
and copies of  
such docu-  
ments.

91. Subject to such rules and the previous payment of such fees as the Local Government prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c) and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Burmese re-  
gistration-  
rules confirm-  
ed.

92. All rules relating to registration enforced in Lower Burma prior to the commencement of the Indian Registration Act, 1877, shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules. III o

### Repeals.

Repeals.

93. (1) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

(2) Nothing herein contained shall be deemed to affect any provision of any enactment in force in any part of British India and not hereby expressly repealed.

## THE FIRST SCHEDULE.

### REPEAL OF ENACTMENTS.

(See section 93.)

Year.	No.	Short title.	Extent of repeal.
1877	III	The Indian Registration Act, 1877 ..	The whole.
1879	XII	The Registration and Limitation Acts Amendment Act, 1879.	So much as is unrepealed.
1883	XIX	The Land Improvement Loans Act, 1883.	So much of section 12 as is unrepealed.
1886	VII	The Indian Registration Act, 1886 ...	The whole.
1888	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed.
1891	XII	The Amending Act, 1891 ... ..	In the second schedule the entries relating to Act III of 1877.
1899	XVII	The Indian Registration (Amendment) Act, 1899.	The whole.

## THE INDIAN EMIGRATION ACT, 1908.

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## (Chapter I.--Preliminary.)

ACT No. XVII OF 1908.<sup>1</sup>

[18th December, 1908.]

## An Act to consolidate the enactments relating to the Emigration of Natives of India.

WHEREAS it is expedient to consolidate the enactments relating to the emigration of Natives of India and their departure by sea out of India for certain purposes ; It is hereby enacted as follows :—

## CHAPTER I.

## PRELIMINARY.

1. (1) This Act may be called the Indian Emigration Act, 1908; Short title  
and extent.  
and

(2) It extends to the whole of British India.

2. (1) In this Act, unless there is anything repugnant in the subject or Definitions.  
context,—

(i) “dependent,” means any of the following persons accompanying any emigrant, namely :—

(a) any woman who has not entered into an agreement to emigrate under this Act ;

(b) any child in whose name and on whose behalf any such agreement has not been entered into ; and

(c) any aged or incapacitated relative or friend :

(ii) “emigrant” means any Native of India who emigrates, or has emigrated, within the meaning of clause (iv) or who has been registered under this Act as an emigrant, and includes any dependent of an emigrant :

(iii) “emigrant-vessel” means a vessel the master of which is licensed under this Act to carry emigrants therein :

(iv) “emigrate” and “emigration” denote the departure by sea out of British India of a Native of India under an agreement to labour for hire in some country beyond the limits of India other than the island of Ceylon or the Straits Settlements :

(v) “labour” means unskilled labour and does not include any work or other occupation of the nature hereinafter referred to in Chapter XI :

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 346; for Report of Select Committee, *see ibid.*, 1908, Pt. V, p. 407 and for Proceedings in Council, *see ibid.*, 1908, Pt. VI, pp. 148, 154 and 183.

(Chap. II.—Ports from which, and Countries to which, Emigration is lawful.)

- (vi) "Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a District Magistrate or a Sub-divisional Magistrate, and includes also any person appointed by the Local Government to perform in any area the functions of a Magistrate under this Act.
- (vii) "master" means any person (except a pilot or harbour-master) having for the time being control or charge of a vessel :
- (viii) "recruiter" includes a head recruiter or other person who collects or receives emigrants recruited by other persons :
- (ix) "Registering Officer" means any person appointed by the Local Government to perform in any area the functions of a Registering Officer under this Act : and
- (x) "vessel" includes anything made for the conveyance by water of human beings or property.

(2) In case of any doubt or dispute as to whether any person should be deemed—

- (a) to emigrate, or
- (b) to be a Native of India,

within the meaning of this Act, the question shall be determined by such person and in such manner as the Governor General in Council may, by rules made under this Act, direct, and such determination shall be final.

## CHAPTER II.

### PORTS FROM WHICH, AND COUNTRIES TO WHICH, EMIGRATION IS LAWFUL.

Ports from  
which emi-  
gration is  
lawful

3. (1) Emigration shall not be lawful except from the ports of Calcutta, Madras, Bombay and Karachi and from such other ports as the Governor General in Council, by notification in the Gazette of India, declares to be ports from which emigration is lawful.

(2) The Local Government may, by notification in the local official Gazette, fix for the purposes of this Act the limits of any port from which emigration is lawful.

Countries  
to which  
emigration  
is lawful.

4. (1) Emigration shall not be lawful except to the countries specified in the first schedule and to such other countries as the Governor General in Council, by notification in the Gazette of India, declares to be countries to which emigration is lawful.

(2) Every notification under this section must contain a declaration that the Governor General in Council has been duly certified that the Government

(Chap. II.—Ports from which, and Countries to which, Emigration is lawful)

of the country to which the notification refers has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of emigrants to that country during their residence therein.

5. (1) Where the Governor General in Council has reason to believe that any of the grounds, hereinafter mentioned, for prohibiting emigration to any country to which emigration is lawful, exists, he may, by notification in the Gazette of India, declare that emigration to that country shall cease to be lawful from a day specified in the notification; and from that day emigration to that country shall accordingly cease to be lawful.

Power for Governor General in Council to prohibit emigration to any country.

(2) The grounds referred to in sub-section (1) are—

- (a) that the plague or any other epidemic disease dangerous to human life has broken out in the country;
- (b) that the mortality among emigrants in the country is excessive;
- (c) that proper measures have not been taken for the protection of emigrants immediately on their arrival in the country or during their residence therein;
- (d) that the agreements made with emigrants as such before their departure from India are not duly enforced by the Government of the country; and
- (e) that the Governor General in Council, having, either directly or through the Secretary of State for India in Council, addressed the Government of the country with a view to obtain information regarding the condition or treatment of emigrants therein, has not within a reasonable time received the information asked for.

6. (1) Where the Local Government has reason to believe that, in any country to which emigration is lawful, the plague or other epidemic disease dangerous to human life has broken out, and that emigrants, if allowed to emigrate to that country, would be exposed to serious risk of life on arrival there, it may, by notification in the local official Gazette, declare that emigration to that country from any port in the territories administered by it shall cease to be lawful pending a reference to the Governor General in Council.

Power for Local Government to suspend emigration pending reference to Governor General in Council.

(2) The Local Government shall at once report the publication of a notification under this section, with the reasons for it, to the Governor General in Council, who shall thereupon publish a notification in the Gazette of India confirming or cancelling the notification published by the Local Government.

(Chap. II.—Ports from which, and Countries to which, Emigration is lawful.  
 Chap. III.—Emigration Agents. Chap. IV.—Protectors of Emigrants and Medical Inspectors.)

Revocation  
of prohibi-  
tion.

7. Where the Governor General in Council is satisfied that the ground on which a notification has been published by him under either of the two last foregoing sections with respect to any country has ceased to exist, he may, by notification in the Gazette of India, declare that emigration to that country shall again be lawful from a day to be specified in the notification.

Power for  
Local Gov-  
ernment to  
prohibit  
emigration  
to specified  
country from  
the whole or  
any specified  
part of its  
territories.

8. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, prohibit, from a day specified in the notification, all Natives of India or any specified class of such Natives from emigrating from the whole or any specified part of the territories under its administration to any specified country.

Saving for  
acts done  
before publi-  
cation of  
notification

9. The publication of a notification under any of the four last foregoing sections shall not affect any act done, offence committed or proceedings commenced before the publication.

### CHAPTER III.

#### EMIGRATION AGENTS.

Appointment  
of Emigration  
Agents

10. (1) The Government of every country to which emigration is lawful may, from time to time, appoint a person to be Emigration Agent in any port from which emigration is lawful.

(2) An appointment under this section shall not take effect until the Local Government, by notification in the local official Gazette, has declared its approval of the appointment

Remuneration  
of Agents.

11. The remuneration to be given to an Emigration Agent shall not depend on, or be regulated by, the number of emigrants sent by him, but shall be in the nature of a fixed salary :

Provided that the Governor General in Council may authorise the payment to specified Emigration Agents of special fees for occasional work.

### CHAPTER IV.

#### PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

Appointment  
of Protectors  
of Emigrants.

12. (1) The Local Government may appoint a proper person to be the Protector of Emigrants for any port within the territories administered by it from which emigration is lawful.

(2) The Governor General in Council may define the area to which the authority of any Protector of Emigrants so appointed shall extend.

(Chap. IV.—Protectors of Emigrants and Medical Inspectors. Chap. V.—Recruiters.)

XLV of  
1860.

(3) Every Protector of Emigrants shall be a public servant within the meaning of the <sup>1</sup> Indian Penal Code.

13. Every Protector of Emigrants, in addition to the special duties assigned to him by this Act or the rules made under this Act, shall— General duties of Protector.

- (a) protect and aid with his advice all emigrants;
- (b) cause, so far as he can, all the provisions of this Act and of the rules made under this Act to be complied with;
- (c) inspect, on arrival, all vessels bringing return emigrants to the port for which he is Protector;
- (d) enquire into the treatment received by the return-emigrants both during the period of their service in the country to which they emigrated, and also during the return voyage, and report thereon to the Local Government; and
- (e) aid and advise the return emigrants so far as he reasonably can.

14. (1) The Local Government may appoint one or more Medical Inspectors of Emigrants at each port from which emigration is lawful and may apportion their respective duties. Appointment of Medical Inspector.

XLV of 1860. (2) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the <sup>1</sup> Indian Penal Code.

15. Every Emigration Agent and all persons in charge of, or employed in, any depôt established under this Act, or in charge of, or employed in, any emigrant-vessel, shall give the Protector of Emigrants and the Medical Inspector of Emigrants every facility for making such inspections, examinations and surveys as are required by this Act or by the rules made under this Act, or as those officers may deem necessary or proper, and shall afford them all such information as they may reasonably require. Protector and Medical Inspector to have facilities for inspection.

## CHAPTER V.

### RECRUITERS.

16. (1) The Protector of Emigrants at each of the ports from which emigration is lawful shall, on the application of the Emigration Agent for any country to which emigration is lawful, grant licenses to so many fit persons as to the Protector seems necessary to be recruiters of emigrants within the area to which the authority of the Protector extends. Protector of Emigrants to license recruiters.

(2) A person shall not, unless he holds a license granted under this Chapter,—

- (a) enter into, or attempt to enter into, any agreement with any person purporting to bind him to emigrate, or

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<sup>1</sup> Gen. Acts, Vol. I.



	(b) in consideration of any hire or reward, induce or attempt to induce any person to leave any place for the purpose of emigrating, or
	(c) act or be employed in any other respect as a recruiter of emigrants.
	(3) Every recruiter shall produce his license when called upon to do so by any Magistrate or officer in charge of a police-station.
Form of license.	17. Every license granted under this Chapter shall specify the particular country for which, and the area within which, the holder is licensed to recruit, and may be in the form set forth in the second schedule.
Duration of license.	18. (1) A license granted under this Chapter shall not be in force for a longer period than one year from the day on which it comes into force. (2) The Protector of Emigrants may, on the ground of misconduct, cancel any license granted by him under this Chapter before the expiration of the period for which it is in force.
Counter-signature of license.	19. (1) A recruiter shall not, in any place beyond the limits of a port from which emigration is lawful, enter or attempt to enter into any agreement with any person purporting to bind him to emigrate, to induce or assist, or attempt to induce or assist, any person to leave any place for the purpose of emigrating, or act or be employed in any other respect as a recruiter of emigrants, unless his license bears the countersignature of the District Magistrate. (2) If a District Magistrate has satisfied himself, after such enquiry as he thinks necessary, that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, he may refuse to countersign a recruiter's license. (3) If a District Magistrate has satisfied himself, after such enquiry as aforesaid, that sufficient and proper accommodation has not been provided in a suitable place, or is not available, for such intending emigrants or emigrants as may be collected by the recruiter pending their registration or removal to the dépôt at the port of embarkation, he may refuse to countersign a recruiter's license or to decide whether he will countersign his license until after the expiration of such time as may in his opinion be reasonable. (4) Before a Magistrate refuses to countersign, or defers his countersignature of, a recruiter's license, he shall record in writing his reasons for so doing.
Power for Magistrate to cancel countersignature in certain cases.	20. If any Magistrate, having countersigned a recruiter's license, afterwards finds reason to think that the licensee is, by character or from any other cause, unfitted to be a recruiter under this Act, or that the accommodation provided for intending emigrants or emigrants collected by him has become unsuitable or has ceased to be available, he may require the licensee to produce his license, and may cancel the countersignature on it, or may

(Chap. V.—Recruiters. Chap. VI.—Registration of Emigrants and Execution of Agreements to emigrate.)

impound the license and send it for cancellation to the Protector of Emigrants who granted it.

21. When a Magistrate countersigns, or refuses to countersign, a recruiter's license, or cancels the countersignature on it, he shall at once report the countersignature, or the refusal or cancellation, and the grounds of the refusal or cancellation, to the Protector of Emigrants who granted the license.

Notice to Protector of Emigrants of countersignature, refusal to countersign or cancellation of countersignature.

22. (1) The Emigration Agent on whose application any recruiter is licensed shall supply the recruiter with a written or printed statement, signed by the Agent, and countersigned by the Protector of Emigrants, of the terms of agreement which the recruiter is authorized to offer on behalf of the Agent to intending emigrants.

Recruiter to be supplied with statement of terms of agreement he is authorized to offer.

(2) The statement shall be both in English and in the vernacular language or languages of the local area within which the recruiter is licensed to recruit.

(3) The recruiter shall give a true copy of the statement to every person whom he invites to emigrate, and shall produce the statement for the information of any Magistrate or officer in charge of a police-station, when called upon to do so by the Magistrate or officer.

23. (1) Every recruiter shall provide sufficient and proper accommodation in a suitable place for such intending emigrants or emigrants as may be collected by him pending their registration or removal to the port of embarkation.

Accommodation to be provided by recruiters.

(2) The place where the accommodation is provided shall have a board fixed in some conspicuous position specifying the purpose for which the place is used.

(3) Every District Magistrate, and any subordinate Magistrate, or officer of Police authorized in this behalf by a rule made under this Act, shall have for the supervision and regulation of the places where accommodation is provided under this section, the same powers as are by this Act conferred on a Protector of Emigrants in respect of depôts at the port of embarkation.

(4) All recruiters or other persons in charge of these places shall afford every Magistrate and any officer of Police authorized as aforesaid in this behalf every facility for visiting and inspecting them.

## CHAPTER VI.

### REGISTRATION OF EMIGRANTS AND EXECUTION OF AGREEMENTS TO EMIGRATE.

24. The Local Government may appoint any person to perform in a specified area, but subject to the control of the District Magistrate or such

Power for Local Government to

(Chap. VI.—Registration of Emigrants and Execution of Agreements to emigrate.)

appoint  
Registering  
Officers.

other officer as the Local Government appoints in this behalf, the functions of a Registering Officer under this Act.

Execution of  
agreements.

25. Every agreement to emigrate entered into by any person must,—

- (a) if executed within the limits of any port from which emigration is lawful, be executed in the presence of the Protector ;
- (b) if executed elsewhere, be executed in the presence of a Registering Officer.

Appearance  
of intending  
emigrants  
before Re-  
gistering  
Officer.

26. Every recruiter who desires to engage any person to emigrate shall appear before a Registering Officer or the Protector of Emigrants (as the case may be) with that person, and with any persons intending to accompany that person as his dependents.

Examination  
and registra-  
tion of emi-  
grant.

27. (1) The Registering Officer or Protector shall thereupon examine the person, apart from the recruiter, with reference to his intended agreement.

(2) If on such examination it appears—

- (a) that such person is competent and willing to enter into the agreement and understands its nature,
- (b) that he has not been induced to enter into it by any coercion, undue influence, fraud, misrepresentation or mistake, and
- (c) that its terms are in conformity with law and are such as, according to the statement furnished to the recruiter under section 22, he was authorized to offer,

the Registering Officer or Protector shall, subject to the provisions of section 29, register in a book to be kept for the purpose, in such form as the Governor General in Council, by rules made under this Act, prescribes,—

- (i) the name, sex, name of the father, caste, occupation and age of the intending emigrant,
- (ii) the name of the village or place of which he is a resident, and
- (iii) such other particulars (if any) concerning him and his dependents (if any) as the Governor General in Council, by rules made under this Act, prescribes.

Power to re-  
fuse registra-  
tion in cases  
of married  
woman.

28. (1) Notwithstanding anything contained in the last foregoing section, the Registering Officer or Protector may refuse to register any married woman under that section if he finds that her husband does not consent to her emigrating.

(2) The Registering Officer or Protector may also, in the case of any woman whom he believes to be married, refuse to decide whether he will register her until after the expiration of such time, not exceeding ten days, as he thinks fit.

(Chap. VI.—Registration of Emigrants and Execution of Agreements to emigrate.)

29. (1) When any person appears before a Registering Officer or Protector under section 26 as a dependent of an intending emigrant, the Registering Officer or Protector shall, if the person is able to give intelligent answers to questions, examine him, apart from the recruiter, as to his dependence on the intending emigrant whom he is about to accompany, and as to his willingness to emigrate. Examination of dependent.

(2) Where the Registering Officer or Protector sees reason to doubt the existence of the dependence or willingness, he may, if he thinks fit, refuse to register the intending emigrant, unless the name of the dependent is omitted from the register.

30. Where the Registering Officer or Protector refuses to register any intending emigrant, he shall record his reasons for the refusal. Record of reasons for refusal to register.

31. (1) Where the particulars concerning any intending emigrant and his dependents (if any) have been registered, the Registering Officer or Protector shall cause an agreement to be prepared in duplicate and shall call on the recruiter and the intending emigrant to execute the agreement in duplicate in his presence, and if they execute it, shall attest the execution with his signature. Execution and attestation of agreement.

(2) An agreement to emigrate shall not be of any effect until the particulars concerning the intending emigrant and his dependents (if any) have been registered, and the agreement has been executed and attested under this Act.

(3) When the particulars concerning any intending emigrant and his dependents (if any) have been registered and an agreement has been executed and attested under this Act, the intending emigrant shall be deemed to be registered under this Act as an emigrant.

(4) Any number of intending emigrants appearing with the same recruiter before the Registering Officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may, with the permission of the Registering Officer or Protector (as the case may be), execute one instrument of agreement under this section, instead of each of such intending emigrants executing a separate instrument.

32. Every agreement to emigrate shall contain a copy of the particulars registered concerning the intending emigrant and his dependents (if any) under section 27, and on the reverse such particulars concerning the nature, duration and term of service and the remuneration of the emigrant, and such other matters (if any) as the Governor General in Council, by rules made under this Act, prescribes. Contents of agreement.

(Chap. VI.—Registration of Emigrants and Execution of Agreements to emigrate. Chap. VII.—Emigration Depôts.)

Record of registrations and agreements.

33. When the agreement has been executed and attested,—

- (a) one of the copies thereof shall be delivered to the emigrant, and the other shall be retained by the Protector or sent by the Registering Officer to him ; and
- (b) a certified copy of the particulars registered under section 27, concerning the emigrant or emigrants by whom the agreement was executed, and concerning his or their dependents (if any), shall be delivered to the recruiter for transmission to the Emigration Agent.

Fee for preparation of agreement.

34. For the preparation of every agreement under this Chapter the recruiter or Emigration Agent shall pay such fee as the Governor General in Council, by notification in the Gazette of India, prescribes :

Provided that the Governor General in Council may at any time, by like notification, declare that the fee payable under this section shall be consolidated, either generally or in any specified area, with the fee payable under section 68.

Power to make agreement if over sixteen.

35. Notwithstanding anything to the contrary in the <sup>1</sup> Indian Contract Act, 1872, it shall be lawful for any person of the age of sixteen years or upwards to enter in manner in this Act provided into an agreement to emigrate to any place to which emigration is lawful. IX of 1872.

Power to make agreement on behalf of child or ward.

36. Any person entering into an agreement to emigrate, and being the parent or guardian of a child under the age of sixteen years and above the age of ten years, may, in the name of and on behalf of the child, enter into an agreement in manner in this Act provided binding the child to emigrate with him.

## CHAPTER VII.

### EMIGRATION DEPÔTS.

Depôts to be established at ports of embarkation.

37. Every Emigration Agent shall establish at the port for which he is appointed a suitable depôt for the reception and lodging of emigrants before embarkation for the country for which he is Emigration Agent, and shall provide all necessary food and clothing for all emigrants during their stay at the depôt.

Licensing of depôts.

38. (1) A depôt established under the last foregoing section shall not be used for the reception and lodging of emigrants until it has been inspected and approved by the Protector of Emigrants and the Medical Inspector of Emigrants, and a license for its use has been granted by the Protector.

<sup>1</sup> Genl. Acts, Vol. II.

(Chap. VII.—*Emigration Depôts.* Chap. VIII.—*Conveyance of Emigrants to Depôts and Procedure on arrival.*)

(2) A license under this section shall not be granted for a longer period than one year from the day on which it comes into force.

(3) The Protector of Emigrants may at any time cancel a license under this section—

- (a) if he considers that the depôt for which it was granted is unhealthy, or has in any respect become unsuitable for the purpose for which it was established ; or
- (b) if the Emigration Agent fails, after reasonable notice, to comply with any of the requirements of this Act or of the rules made under this Act.

39. The Protector of Emigrants and the Medical Inspector shall from time to time, and at least once in every week during which any emigrants may be kept in any depôt at the port for which they are Protector and Medical Inspector, respectively, inspect the emigrants in that depôt and examine the state of the depôt and the manner in which the emigrants therein are lodged, fed, clothed and otherwise provided for and attended to.

Inspection by Protector and Medical Inspector.

40. The Medical Inspector shall report to the Protector of Emigrants any circumstance that may come to his knowledge showing that any depôt is not suitable for its purpose, or that the emigrants lodged therein are treated with any oppression or neglect.

Report by Medical Inspector.

41. (1) The Medical Inspector may, if he thinks fit, direct that any emigrant suffering from any disease likely to be dangerous to his neighbours shall be isolated or excluded from the depôt.

Treatment of emigrant suffering from disease.

(2) The Medical Inspector may, if he thinks fit, order the removal of any emigrant so suffering to a proper hospital for treatment at the expense of the Emigration Agent ; and the expense (if any) incurred by the Protector of Emigrants in respect of the removal of the emigrant and his treatment in the hospital shall be recoverable from the Emigration Agent by the Protector of Emigrants, with interest thereon at the rate of six per centum per annum from the date on which the expense was incurred.

## CHAPTER VIII.

### CONVEYANCE OF EMIGRANTS TO DEPÔTS AND PROCEDURE ON ARRIVAL.

42. A recruiter shall not remove or attempt to remove any intending emigrant to a depôt or induce or attempt to induce him to go to a depôt, or to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or aid him in going to a depôt, or in leaving any such local limits, until the intending emigrant has been registered under this Act as an emigrant.

Emigrant not to be removed before registration.

(Chap. VIII.—Conveyance of Emigrants to Depôts and Procedure on arrival.)

Conveyance  
of emigrant  
to depôt.

43. (1) Every emigrant must, after he has been registered under this Act, be conveyed with all convenient despatch, by or under the orders of the recruiter or Emigration Agent, to the depôt established at the port of embarkation by the Emigration Agent on whose application the recruiter has been licensed.

(2) When an emigrant has been registered at a place beyond the limits of the port of embarkation, he must, while proceeding to the depôt, be accompanied throughout the journey either by the recruiter himself, or by a competent person appointed by him with the approval of a Magistrate.

(3) The Magistrate shall give to the person so appointed a certificate signed by him stating that he has been appointed for the journey to the depôt.

(4) The recruiter or the person so appointed shall, throughout the journey, provide the emigrant with proper and sufficient food and lodging.

Report of  
arrival at  
depôt.

44. The arrival at a depôt of each emigrant must immediately be reported by the person in charge of the depôt to the Emigration Agent and by the Agent to the Protector of Emigrants.

Examination  
by Medical  
Inspector.

45. (1) The copy of the particulars registered under section 27, received by the recruiter from the Registering Officer or Protector, must, as soon as conveniently may be after the arrival of the emigrant at the depôt, be shown by the Emigration Agent to the Medical Inspector of Emigrants.

(2) The Medical Inspector shall examine each emigrant whose name is entered in the said copy to ascertain whether he is fit, having regard to his age and state of health, to undertake the journey to the country to which he has agreed to emigrate.

(3) The Medical Inspector, if satisfied of his fitness, shall give a certificate to that effect to the Emigration Agent. If not so satisfied, he shall give a certificate to that effect to the Protector of Emigrants.

Power for  
Protector to  
order pay-  
ment of ex-  
penses of  
return of  
emigrant in  
certain cases.

46. (1) In any of the following cases, namely :—

- (a) if the Medical Inspector of Emigrants finds that an emigrant is, or has become, unfit to undertake the journey to the country to which he has agreed to emigrate, and if the Protector of Emigrants considers that the emigrant has not dishonestly represented himself as fit to undertake the journey, or
- (b) if the Protector finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any emigrant as makes it just to rescind the agreement to emigrate, or
- (c) if the Emigration Agent refuses to fulfil the agreement entered into with the emigrant.

(Chap. VIII.—Conveyance of Emigrants to Depôts and Procedure on arrival.)

the Protector may order the Emigration Agent to pay to the emigrant such sum as the Protector deems reasonable as compensation, and, when the emigrant has been registered at a place beyond the limits of the port of embarkation, such reasonable sum as is necessary to enable him to return to the place at which he was registered, and may take any steps which he thinks necessary for the conveyance of the emigrant to that place.

(2) Any emigrant who has been registered at any place beyond the limits of the port of embarkation, and who from his state of health is, in the opinion of the Medical Inspector of Emigrants, unfit to undertake at once the return-journey to the place at which he was registered, shall be entitled to be fed, lodged, clothed and attended to at the dépôt at the expense of the Emigration Agent until he is reported by the Medical Inspector fit to undertake the return-journey.

47. (1) Where any order is made under the last foregoing section with reference to any emigrant who was registered at any place beyond the limits of the port of embarkation —

Payment of expenses of dependents and relatives.

- (a) any emigrant who has been registered as his dependent, or
- (b) any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant,

shall be entitled—

- (i) to be conveyed at the expense of the Emigration Agent with the emigrant to the place at which he was registered ; and
- (ii) if the emigrant is unable to travel, to be lodged, fed and clothed in the dépôt at the expense of the Emigration Agent until the emigrant is able to travel.

(2) The Protector of Emigrants may include any expenses incurred under this section in an order made under the last foregoing section with respect to the emigrant.

48. If it appears that during the journey to the dépôt any emigrant has suffered any ill-treatment, or that, in the case of any emigrant who has been registered at a place beyond the limits of the port of embarkation, the provisions of section 43 have not been complied with, the Protector of Emigrants may order the Emigration Agent to pay—

Compensation to emigrant for ill treatment on journey.

- (a) to the emigrant a reasonable sum by way of compensation, and
- (b) to the Protector the expenses (if any) which may have been incurred by or under the orders of the Protector on behalf of the emigrant by reason of the neglect to comply with the provisions of section 43.



(Chap. VIII.—*Conveyance of Emigrants to Depôts and Procedure on arrival.* Chap. IX.—*Emigrant-vessels.*)

Power for Protector to pay and recover expenses incurred on behalf of emigrant.

49. (1) On failure of the Emigration Agent for twenty-four hours to comply with an order of the Protector for the payment of any sum to an emigrant under any of the last three foregoing sections, the Protector may pay the same to the emigrant.

(2) Every sum paid by the Protector to an emigrant under sub-section (1), and, on failure of the Emigration Agent for twenty-four hours to comply with an order for payment thereof under the last foregoing section, every sum which the Protector may have ordered the Emigration Agent to pay to him under that section, shall be recoverable from the Emigration Agent with interest thereon at the rate of six per centum per annum from the date of payment.

(3) Further proof shall not be required by any Court in any such case than that the Protector gave the Emigration Agent an order to pay the sum, and that the Emigration Agent for twenty-four hours failed to comply with the order.

## CHAPTER IX.

### EMIGRANT-VESSELS.

Master of emigrant-vessel to be licensed.

50. An emigrant shall not be received on board any vessel unless a license to carry emigrants in the vessel has been obtained from the Local Government.

Application for license.

51. (1) When the master or owner of any vessel desires to obtain a license to carry emigrants in his vessel, he shall apply in writing through the Protector of Emigrants to the Local Government for the license.

(2) The application must state the number of emigrants which, according to the rules as to space contained in this Chapter, the applicant deems the vessel capable of carrying, and the tonnage and such other particulars respecting the vessel as the Governor General in Council, by rules made under this Act, prescribes.

Survey and licensing of vessel.

52. (1) The Protector of Emigrants shall cause the vessel to be surveyed by a competent person at the cost of the master or owner, with a view to ascertain her seaworthiness, and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated, and is supplied with all the tackle, apparel and furniture requisite for her intended voyage :

Provided that, if the vessel is a steam-ship having a certificate of survey granted by the Board of Trade or any British Colonial Government or under the<sup>1</sup> Indian Steamships Act, 1884, and in force and applicable to her intended voyage, the survey under this subsection with a view to ascertain her sea-

VII of 1884.

<sup>1</sup> Genl. Acts, Vol. III.

*(Chap. IX.—Emigrant-vessels.)*

worthiness shall not extend to her hull or machinery unless the Protector of Emigrants has reason to believe that, since the grant of the certificate, her hull or machinery has sustained injury or damage or has otherwise become inefficient.

(2) If the Local Government is of opinion that the vessel is in all respects suitable for the carrying of emigrants under this Act, and is properly manned and officered, it shall give to the master of the vessel a license to carry emigrants therein specifying the number of emigrants which may be received on board.

53. (1) A license shall not be granted under the last foregoing section unless—

Accommodation required on board emigrant-vessel.

(a) there is provided for the emigrants, either between decks or, subject to the approval of the Protector of Emigrants and the Medical Inspector, in cabins on the upper deck, a space devoted to the exclusive use of the emigrants having in every part a height of not less than six feet;

(b) a separate place is fitted up for a hospital; and

(c) such arrangements are made for the separation of women (married or single) and children from the other emigrants as the Governor General in Council, by rules made under this Act, prescribes.

(2) The cabins on the upper deck provided under clause (a) of this section must be firmly secured and entirely covered in.

54 Every emigrant vessel shall contain within the space referred to in clause (a) of the last foregoing section at least twelve superficial feet and seventy-two cubic feet of space for each emigrant:

Rules as to space on board emigrant-vessel.

Provided that two emigrants under the age of ten years shall for the purposes of this section count as one only.

55. There shall be on board every emigrant-vessel at the time of departure of the vessel from the port at which they embark, provisions, clothing, fuel and water for the emigrants (over and above the supply for the master, officers and crew, and of the cabin and other passengers, if any), in such quantity and of such description and quality as the Governor General in Council, by rules made under this Act, prescribes.

Provisions, clothing, fuel and water.

56. Every emigrant-vessel shall, at the time of departure of the vessel from the port at which the emigrants embark, have on board, and shall carry with her, a properly qualified surgeon, and also such compounders, interpreters and attendants subordinate to the surgeon, and such medicines and other stores, in such quantity and of such quality as the Governor General in Council, by rules made under this Act, prescribes.

Surgeons, attendants, medicines and stores.

(Chap. IX.—*Emigrant-vessels.* Chap. X.—*Embarkation and Departure.*)

Duty of Protector and Medical Inspector with respect to enforcement of foregoing sections.

57. The Protector of Emigrants and the Medical Inspector of Emigrants shall see personally that all the provisions of the last two foregoing sections are complied with.

Bond to be executed by master of emigrant-vessel.

58 (1) Every master licensed under this Act shall, on the requisition of the Protector of Emigrants, and before any emigrant embarks on board his vessel, execute to the Protector in duplicate, a bond, in such form as the Local Government prescribes, binding himself and the owner of the vessel in a penal sum of ten thousand rupees, to perform the duties imposed by this Act or any rule made under this Act on a master and owner, respectively.

(2) The Protector of Emigrants shall forward one copy of the bond to such officer as may be appointed in this behalf by the Government of the country to which the emigrants are to be conveyed, or, in the case of a foreign colony, to the British Consular Agent, and the other copy to the Local Government.

## CHAPTER X.

### EMBARKATION AND DEPARTURE.

Time of embarkation after arrival.

59. An emigrant shall not embark, except with the permission of the Protector of Emigrants, until seven days have elapsed from the date of his arrival at the depôt.

Time at which emigrant-vessels may leave India.

60. (1) An emigrant-vessel shall not sail from any port in British India—

(a) to any country west of the Cape of Good Hope, except at such seasons as the Governor General in Council, by rules made under this Act, prescribes as seasons during which it shall be lawful for emigrant-vessels generally, or of a class to which the vessel belongs, to sail to that country ;

(b) to any country during any season which the Governor General in Council, by notification in the Gazette of India, declares to be a season during which the sailing of emigrant-vessels to that country is prohibited.

Procedure if emigrant refuses to embark.

61. If any emigrant without sufficient cause refuses or neglects to embark when called on by the Emigration Agent to do so, it shall not be lawful to compel the emigrant to embark :

Provided that nothing in this section shall affect the civil or criminal liabilities which an emigrant incurs by reason or in respect of any such refusal or neglect.

## (Chap. X.—Embarkation and Departure)

62. (1) When any emigrants are about to embark on board any vessel the Emigration Agent shall supply the master of the vessel with four copies of a list, specifying, as accurately as may be, the names, ages and occupations of the emigrants, and the names of their respective fathers. List of, and passes for, emigrants.

(2) The master shall not receive any emigrant on board unless he is provided with a pass, signed by the Emigration Agent, and countersigned by the Protector, stating the name and age of the emigrant, the name of his father, and the country to which he has agreed to emigrate, and certifying that he is in a fit state of health to undertake the voyage to that country.

(3) Every emigrant shall on embarkation deliver the pass to the master.

(4) The master shall compare the emigrants who embark and the passes delivered by them with the list supplied by the Emigration Agent, and, if the list appears to be correct and to correspond with the passes delivered and with the emigrants embarked, the master shall sign the four copies of the list.

(5) The master shall not permit any emigrant to remain on board who has not delivered up his pass to the master or is not mentioned in the list.

63. (1) When the copies of the list have been signed, the master shall give two of the copies to the Protector of Emigrants, who shall sign them if he believes them to be correct. Disposal of the two copies of list to be given by master to Protector.

(2) The Protector shall send one of the copies so signed by him by the vessel which carries the emigrants to such officer as may be appointed in this behalf by the Government of the country to which the emigrants have agreed to emigrate, or, in the case of a foreign colony, to the British Consular Agent and shall file the other copy in his own office.

64. (1) The master shall give to the Emigration Agent the two remaining copies of the list. Disposal of the two copies of list to be given by master to Emigration Agent.

(2) The Emigration Agent shall thereupon sign the copies, and shall return one of them to the master.

(3) The master shall, on the arrival of the vessel at the country to which the emigrants have agreed to emigrate and before their disembarkation, deliver the copy so returned to him to such officer as may be appointed in this behalf by the Government of the country, or, in the case of a foreign colony, to the British Consular Agent.

65. (1) The Medical Inspector shall be present at the embarkation of all emigrants, and shall examine each emigrant to ascertain if he is in a fit state of health to undertake the voyage to the country to which he has agreed to emigrate; and, if he finds that he is not fit to undertake the voyage, he shall inform the Protector accordingly. Examination of emigrants by Medical Inspector.

*(Chap. X.—Embarkation and Departure.)*

(2) The Protector may thereupon refuse to permit the emigrant to embark ; and any emigrant, registered as a dependent of an emigrant whom the Protector has refused to permit to embark, or any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of the emigrant, may, notwithstanding anything in this Act, refuse to embark.

(3) The provisions of sections 46, 47 and 49 shall apply to emigrants who under this section are not permitted to embark, and to any emigrants who under this section refuse to embark, and to the recovery of expenses incurred under this Act in respect of them.

Certificates  
from Protec-  
tor of Emi-  
grants and  
Emigration  
Agent.

66. Before any emigrant-vessel clears out of any port, the master of the vessel shall obtain from the Protector of Emigrants at the port, and from the Emigration Agent for the country to which the emigrants are to be conveyed, certificates signed by the Protector and Emigration Agent, respectively, to the effect that the Protector and Agent have, in respect of all the emigrants embarking at that port in the vessel, done all that is required by the foregoing provisions of this Act or by the rules made under this Act, to be done on the part of the Protector and Agent, respectively, and that all the directions for the security, well-being and protection of emigrants which are contained in this Act or in the rules made under this Act have, in the case of that vessel, been complied with.

Copies of Act  
and rules to be  
kept onboard.

67. The master of every emigrant-vessel shall keep on board the vessel during the whole voyage two copies of this Act, and of all rules made under this Act, and two copies of a translation of this Act, and of those rules, in such language or languages as the Local Government directs, and shall, on request made at any reasonable time, produce one of those copies to any emigrant for his perusal.

Fee for each  
embarked  
emigrant.

68. For each emigrant who embarks on board an emigrant-vessel the Emigration Agent shall pay to the Protector of Emigrants a fee of such amount as the Governor-General in Council, by notification in the Gazette of India, prescribes :

Provided as follows :—

- (a) the fee payable under this section shall not be more than is, in the opinion of the Governor General in Council, sufficient to raise the total income from fees under this Act to an amount which will cover the cost of any establishment or supervision which the Governor-General in Council thinks necessary to provide for the control of emigration ;

## (Chap. X.—Embarkation and Departure)

(b) If it appears to the Governor General in Council expedient to provide, in the case of any country, any special establishment or expenditure for the protection of Indian emigrants to that country, the Governor General in Council may increase the fee payable in the case of emigrants to that country to an amount sufficient, in his opinion, to cover the cost of the special establishment or expenditure.

69. Every master licensed under this Act shall see that all the provisions of this Act and the rules made under this Act are observed on board his vessel during the voyage from British India to the country to which the emigrants are to be conveyed.

Master to see to observance of Act and rules on board his vessel.

70. The master shall return his pass to each emigrant before he disembarks in the country to which he has agreed to emigrate.

Return of pass to emigrant.

*Special Provisions as to Vessels sailing from Calcutta.*

71. The master of every vessel carrying emigrants from the port of Calcutta shall proceed on his voyage and depart with his vessel from Garden Reach within twenty-four hours after the embarkation of such of the emigrants as have first embarked.

Emigrant-vessel sailing from Calcutta to depart within twenty-four hours of embarkation.

72. Every sailing-vessel leaving the port of Calcutta with emigrants shall proceed from Garden Reach to sea under tow of a steamer declared to be competent by such officer as the Local Government appoints in this behalf.

Emigrant-vessel sailing from Calcutta to be towed to sea.

73. (1) Where an emigrant-vessel leaves the port of Calcutta, if during her passage down the river, and while between Garden Reach and Diamond Harbour, the disease of measles, scarlet-fever or small-pox appears on board, the master shall, if so required by the surgeon in charge of the emigrants, send to the hospital at Diamond Harbour all emigrants suffering from the disease, with any emigrants registered as their dependents and any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian or ward of any such emigrant and who wishes to accompany him or her, and shall at once inform the Protector of Emigrants at Calcutta of the number and names of the emigrants so sent to hospital.

Power of surgeon of emigrant-vessel leaving Calcutta to require sick emigrants to be sent to hospital.

(2) The provisions of sections 43, 47 and 49 shall, so far as may be, apply to emigrants landed under this section, and to the recovery of expenses incurred in respect of them.

(Chap. X.—*Embarkation and Departure.* Chap. XI.—*Departure of Natives of India by Sea out of India for certain purposes.*)

Power of  
surgeon of  
emigrant-  
vessel leaving  
Calcutta to  
require all  
emigrants to  
be landed  
when cholera  
appears.

74. (1) In the event of cholera in an epidemic form appearing among the emigrants on board any such vessel carrying emigrants from the port of Calcutta, the surgeon in charge of the emigrants may require the master to land all the emigrants on board the vessel at Diamond Harbour.

(2) The master shall at once comply with the request of the surgeon, and shall immediately give notice of his having done so to the Protector of Emigrants at Calcutta, who shall take such action thereon as the Governor General in Council, by rules made under this Act, prescribes.

#### CHAPTER XI.

##### DEPARTURE OF NATIVES OF INDIA BY SEA OUT OF INDIA FOR CERTAIN PURPOSES.

Application  
for permission  
to engage  
Natives of  
India to de-  
part abroad  
for certain  
purposes.

75. (1) Whoever desires to engage any Native of India to depart by sea out of India for the purpose—

- (a) of working as an artisan, or
- (b) of any exhibition or entertainment, or
- (c) of service in any restaurant, tea-house or other place of public resort, or,

(d) save as provided in sub-section (2), of domestic service, in any place beyond the limits of India other than the Island of Ceylon or the Straits Settlements, shall apply for the permission of the Local Government having jurisdiction at the port from which such person is to depart, and shall state in his application—

- (i) the number of the persons whom he proposes so to engage ;
- (ii) the place or places beyond the limits of India to which such persons and their dependents are to proceed ;
- (iii) the accommodation to be provided for such persons and their dependents until their departure out of India and during the voyage ;
- (iv) the provision to be made for the health and well-being of such persons and their dependents during the period of the proposed engagement, and for their repatriation at the end of such period ;
- (v) the terms of the agreements under which such persons are to be engaged ; and
- (vi) the security in British India which he proposes to furnish for the due observance of such agreements and for the proper treatment of the persons to be engaged and their dependents.

(Chap. XI.—Departure of Natives of India by Sea out of India for certain purposes.)

(2) Nothing in sub-section (1) shall be deemed to apply to any person who in good faith—

- (a) engages a Native of India to accompany him out of India as his personal domestic servant, or
- (b) engages in compliance with the request of some other person, not being in India, a Native of India to depart out of India, for the purpose of becoming the personal domestic servant of such other person.

*Explanation.*—For the purposes of this Chapter—

- (i) the word “port” shall mean a port from which emigration is lawful or any port which the Governor General in Council, by notification in the *Gazette of India*, notifies in this behalf; and
- (ii) the words “emigrant” and “emigrate” in the definition of “dependent” in section 2, sub-section (1), clause (i), shall be read as referring to the departure by sea out of India of a person whom it is desired to engage under this Chapter.

76. On receiving an application under section 75 the Local Government may, after such inquiry as may be necessary, grant the permission applied for on such terms and conditions (if any) and on payment of such fees (if any) as it thinks fit, or withhold such permission, and the decision of the Local Government shall be final.

Applications  
how to be  
disposed of.

77. (1) Before any Native of India departs from India in accordance with permission granted under section 76, the person by whom he has been engaged shall appear before the Protector of Emigrants at the port of embarkation with such Native of India and with any persons intending to accompany him as his dependents.

Appearance  
of engaged  
persons  
before, and  
registration  
of names by,  
Protector of  
Emigrants.

(2) If it appears to the Protector of Emigrants—

- (a) that permission to engage such Native of India has been duly obtained,
- (b) that the terms of the agreement under which such Native of India has been engaged are in accordance with the terms of the permission granted, and
- (c) that the conditions on which such permission was granted have been complied with,

he shall register in a book to be kept for the purpose such particulars concerning such Native of India and his dependents (if any) and concerning the person engaging him in such form as the Governor General in Council, by rules made under this Act, prescribes.



(Chap. XI—*Departure of Natives of India by Sea out of India for certain purposes.* Chap. XII.—*Rules.*)

Provisions as to security.

78. Where such security as is referred to in section 75, sub-section (1), sub-clause (vi), has been furnished, the Local Government may, after such inquiry as may be necessary, pass orders in regard to the forfeiture of the security and the application of the same or of any part thereof, or may order the return of the security or of any part thereof to the person by whom it was furnished, or to his representative.

Delegation to Protector of Emigrants of authority to receive or dispose of applications.

79. The Local Government may, by notification in the local official Gazette, authorize a Protector of Emigrants to receive or dispose of applications made under this Chapter :

Provided that an appeal shall lie to the Local Government from every order passed by a Protector of Emigrants in exercise of the authority so conferred.

Application of Chapter to ports from which emigration is not lawful.

80. For the purposes of the application of this Chapter at any port notified under clause (i) of the explanation to section 75—

- (a) such port shall be deemed to be a port from which emigration is lawful, and
- (b) such officer as the Local Government may appoint in this behalf shall be deemed to be the Protector of Emigrants.

## CHAPTER XII.

### RULES.

Power for Governor General in Council to make rules.

81. (1) The Governor General in Council may, by notification in the Gazette of India, make rules consistent with this Act—

- (a) to prescribe the person by whom any doubt or dispute referred to in sub-section (2) of section 2 shall be determined and the procedure to be followed and the proof to be required in such cases ;
- (b) to provide for the supervision and regulation of places of accommodation provided under this Act, and to define the classes of Magistrates and the officers of Police to be authorized to visit and inspect those places ;
- (c) to prescribe the form of the register required under this Act, and the particulars to be entered therein, and to regulate the control to be exercised over Registering Officers by the District Magistrate or officer (if any) appointed in this behalf under this Act ;
- (d) to prescribe the forms of the agreements to be made under this Act, and the particulars to be contained therein, and the language or languages in which agreements must be expressed ;

- (e) to prescribe the conditions on which licenses for the establishment of depôts under this Act may be given, to provide for the supervision and regulation of depôts, and for the medical care of the emigrants during their residence there, and the measures to be taken on the outbreak of any epidemic or infectious disease there ;
- (f) to prescribe the forms to be supplied by Emigration Agents and recruiters for the purposes of this Act ;
- (g) to prescribe the particulars which the owner or master of a vessel applying for a license to carry emigrants in his vessel must state ;
- (h) to regulate the proportion of women to be ordinarily carried in any emigrant-vessel with male emigrants, and to prescribe the arrangement to be made for the separation of women (married or single) and children from the other emigrants on board an emigrant-vessel ;
- (i) to prescribe the description, quantity and quality of provisions, fuel and water to be taken by emigrant-vessels, the daily allowance of food and water to be issued, and the nature and amount of clothing to be supplied to each emigrant during the voyage ;
- (j) to fix the number of the compounders, interpreters and attendants subordinate to the surgeon to be carried for the care of the sick or weakly on board each emigrant-vessel ;
- (k) to prescribe the nature, quantity and quality of medicines and other stores to be carried on board emigrant-vessels ;
- (l) to provide for the ventilation and cleanliness of every emigrant-vessel during a voyage, and for its being furnished with a sufficient number of life-buoys, boats, water-buckets and other appliances to be used in case of shipwreck or fire ;
- (m) to prescribe the seasons at which alone emigrant-vessels or specified classes of emigrant-vessels may sail from any port in British India to any country west of the Cape of Good Hope to which emigration is for the time being lawful ;
- (n) to provide for the disposal of emigrants who may be landed under section 74 ;
- (c) to provide for the medical care of the emigrants on the voyage, and to provide for the measures to be taken on the outbreak of any epidemic or infectious disease on a voyage ;
- (p) to provide for a journal being kept by the surgeon of every emigrant-vessel, recording the health of the emigrants, and his treatment of the sick, with full explanation of the causes of every

## (Chap. XIII.—Offences.)

death; and to define the duties and powers of the surgeon in respect of the emigrants committed to his care;

- (q) to define and regulate the powers and duties of the several officers appointed by the Government under this Act;
- (r) generally to provide for the security, well-being and protection of emigrants; and
- (s) to carry into effect the provisions of Chapter XI:

Provided that the Local Government may, in special cases, notwithstanding anything contained in rules made under clause (h) of this section, permit an emigrant-vessel to sail, though it does not carry the proportion of women required to be carried in ordinary cases.

(2) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

## CHAPTER XIII.

## OFFENCES.

Unlawful  
recruiting.

82. (1) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act,—

- (a) makes, or attempts to make, any agreement with any Native of India, purporting to bind him to emigrate, or
- (b) in consideration of any hire or reward, induces, or attempts to induce, any Native of India to leave any place for the purpose of emigrating, or otherwise acts or is employed as a recruiter of emigrants, or

(c) in consideration of any hire or reward, receives into or detains in any place, or being a recruiter, in any place other than a place in which accommodation has been provided in accordance with this Act or the rules made under this Act, any person with a view to his being registered as an emigrant, or after his registration as an emigrant and before his departure for the dépôt at the port of embarkation, shall be punishable with fine which may extend to five hundred rupees.

(2) If any person, other than a recruiter licensed under this Act, commits an offence under this section, any police-officer may arrest him without warrant.

Recruiters  
removing un-  
registered  
emigrants to  
dépôt.

83. Whoever, being a recruiter licensed under this Act,—

- (a) before any intending emigrant has been registered under this Act as an emigrant,—
  - (i) removes or attempts to remove him to a dépôt, or

## (Chap. XIII.—Offences.)

- (ii) induces, or attempts to induce, him to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or
- (iii) aids, or attempts to aid, him in leaving any such local limits or going to any depôt, or
- (b) fails to give a true copy of the statement with which he is provided under section 22 to any person whom he invites to emigrate, or
- (c) fails to provide any emigrant whom he has engaged, and who has been registered at a place beyond the limits of the port of embarkation, with suitable lodging and food, or otherwise ill-treats any emigrant on his journey to the depôt,

shall be punishable with fine which may extend to five hundred rupees.

84. Whoever, by means of intoxication, coercion or fraud, causes or induces, or attempts to cause or induce, any Native of India to emigrate or to enter into any agreement to emigrate or to leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Fraudulently inducing Native to emigrate.

85. Whoever,—

- (a) without lawful authority, issues any written order to the Police to assist himself or any other person to procure emigrants, or
- (b) falsely represents that any emigrants are required by the Government or are to be engaged on behalf of the Government,

False representation of Government authority.

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

86. Any master of a vessel who—

- (a) knowingly receives on board his vessel any emigrant who has not complied with the provisions of this Act or the rules made under this Act, so far as they are binding on him, or,
- (b) not being licensed under this Act, knowingly receives any emigrant on board his vessel, or,
- (c) being licensed under this Act, knowingly receives on board his vessel any emigrant in excess of the number specified in his license,

Receiving emigrants on board vessel in contravention of Act.

shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees for each emigrant so received, or with both; and the vessel, her tackle, apparel and furniture, may be declared by the Court before which the master is tried to be forfeited to His Majesty.

## (Chap. XIII.—Offences.)

Fraudulent  
acts on part  
of master.

87. Any master licensed under this Act, who fraudulently does, or suffers to be done, any act or thing whereby the license becomes inapplicable to the altered state of the vessel or other matter to which the license relates, shall be punishable with fine which may extend to five thousand rupees, and he may also be sued on any bond which he may have executed under section 58.

Clearance  
without  
compliance  
with Act.

88. Any master of an emigrant-vessel who clears, or attempts to clear, his vessel outwards when any of the provisions of section 53, 55 or 56 have not been complied with in respect of his vessel shall be punishable with fine which may extend to four thousand rupees.

Failure of  
master to  
comply with  
provisions as  
to lists and  
passes.

89. Any master who receives on board his vessel any emigrants and fails to comply with the requirements of sections 62, 63 and 64 in respect of those emigrants, shall be punishable with fine which may extend to two hundred rupees for each emigrant so received on board.

Master taking  
on board,  
after clear-  
ance, emi-  
grants not  
entered in  
lists.

90. Any master who, having cleared his vessel, takes on board any emigrant not entered in the list mentioned in section 62 or not furnished with a pass required by that section, shall be punishable with fine which may extend to two hundred rupees for each emigrant so taken.

Master land-  
ing emigrant  
at other than  
specified  
country

91. Any master who lands any emigrant in any country other than the country for which he has been shipped by the Emigration Agent, shall be punishable for every emigrant so landed with fine which may extend to two hundred rupees or with imprisonment for a term which may extend to one month, or with both, unless the landing has been caused by stress of weather or unavoidable accident, or has taken place under the provisions of section 73 or 74.

Failure to  
comply with  
provisions as  
to leaving  
Calcutta.

92. Any master of a sailing-vessel leaving the port of Calcutta with emigrants on board who—

(a) does not leave Garden Reach with his vessel within the time prescribed in section 71, or,

(b) without reasonable excuse, causes or allows his vessel to go below Garden Reach without being in tow of such a steamer as is referred to in section 72, .

shall be punishable with fine which may extend to one thousand rupees

Emigrant  
deserting or  
refusing to  
proceed to  
depôt.

93. (1) Any emigrant who—

(a) deserts before arrival at dépôt, or

(b) refuses without reasonable cause to proceed to the dépôt,

shall be punishable with fine which may extend to twenty rupees, or to the cost incurred in entering into an agreement with, registering and conveying.

him to the depôt, whichever is greater, and, in default of payment of the fine, with imprisonment which may extend to one month.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

94. (1) Any emigrant who—

(a) deserts from the depôt, or

(b) without reasonable cause, refuses or neglects to embark when called upon to do so by the Emigration Agent,

Emigrant  
deserting  
from depôt or  
failing to  
embark.

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to Rs 50, or to double the amount of the cost incurred in entering into an agreement with, registering and conveying him to the depôt, and maintaining him therein, or with both.

(2) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

95. Any person who causes, or any master who knowingly permits, any emigrant to embark contrary to the provisions of section 59, shall be punishable with fine which may extend to two hundred rupees for each emigrant so embarked.

Causing or  
permitting  
embarkation  
of emigrant  
in contraven-  
tion of section  
59.

96. Whoever—

(a) without having first obtained the permission of the Local Government referred to in section 75, sub-section (1), enters or attempts to enter into an agreement purporting to bind any Native of India to depart by sea out of India for any of the purposes specified in the said sub-section, or

(b) causes any Native of India engaged by him for any such purpose as aforesaid to depart from any port which is not a port from which emigration is lawful, or which has not been notified under clause (1) of the explanation to section 75, or

(c) causes any Native of India engaged by him, after grant of the permission referred to in section 76, to depart by sea out of India without registration of the particulars required by section 77, sub-section (2),

Offences  
against provi-  
sions of  
Chapter XI.

shall, on conviction by a Magistrate of the first class, be punishable with fine which may extend to two hundred and fifty rupees for each Native of India in respect of whom the offence is committed.

(Chap. XIII.—Offences. Chap. XIV.—Supplemental.)

Institution of prosecutions.

97. Prosecutions under sections 86 to 96, both inclusive, shall not be instituted except as follows, namely :—

- (a) prosecutions under sections 86 to 92, both inclusive, by the Emigration Agent, or by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government ;
- (b) prosecutions under section 93, by or with the sanction of a Magistrate or Registering Officer or of the Protector of Emigrants at the port of embarkation ;
- (c) prosecutions under section 94, by the Emigration Agent with the sanction of the Protector ;
- (d) prosecutions under sections 95 and 96, by the Protector of Emigrants or by an officer appointed for the purpose by the Local Government.

Defence to charges of desertion.

98. The following shall be good defences to charges under sections 93 and 94, respectively, namely :—

- (a) to a charge under section 93, that the accused person or other emigrants accompanying him has or have been ill-treated, deceived or defrauded by the recruiter or any person under his control ;
- (b) to a charge under section 94, that the emigrant has suffered any ill-treatment or neglect in the depot or on the journey thither.

Power for Customs-officers to search and detain for purposes of Act.

99. All the powers for the time being conferred by law on officers of sea-customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act.

## CHAPTER XIV.

### SUPPLEMENTAL.

Power for Local Government to appoint Magistrate for purposes of Act.

100. The Local Government may appoint any person to perform within a specified area the functions of a Magistrate under this Act.

Suits against Emigration Agent for breach of duty.

101. (1) Where an Emigration Agent is chargeable with a breach of any duty to an emigrant arising from any agreement with the emigrant or imposed by this Act or the rules made under this Act, the Protector of Emigrants may, if he thinks fit, institute a suit on behalf of the emigrant against the Emigration Agent for the recovery of compensation for the breach.

*(Chap. XIV.—Supplemental.)*

(2) In awarding compensation under this section all sums ordered to be paid under section 46 or section 48 shall be taken into consideration.

102. (1) The Governor General in Council may, by notification in the Gazette of India, determine what shall be held to be, for the purposes of this Act, the probable length of the voyages by sailing-vessels and vessels using steam power, respectively, from any port from which, to any country to which, emigration is for the time being lawful.

Power for Governor General in Council to determine probable lengths of voyages for purposes of Act.

(2) Until otherwise determined under this section, the probable length of the voyage by sailing-vessels from the ports mentioned in the third schedule to the countries mentioned in that schedule, shall be deemed to be the lengths stated in that schedule.

103. On and from such a date as the Governor General in Council may, by notification in the Gazette of India, have fixed or may hereafter, by like notification, fix in this behalf with respect to any protected Native State adjoining the Straits Settlements, or with respect to any country for labour in which Natives of India are recruited exclusively through the agency of the Government of the Straits Settlements, a Native of India departing by sea out of British India under an agreement to labour for hire in any such State or country shall not, so long as the notification continues to apply to the State or country, be deemed to emigrate within the meaning of this Act

Provisions supplementary to section 2, sub-section (1) (iv), of this Act

104. The provisions of this Act shall apply to emigration from British Indian ports—

Application of Act to emigration from British ports to French and Dutch Colonies.

- (a) to the French colonies, under the terms of the Convention executed at Paris on the first day of July, 1861, and ratified at the same place on the thirtieth day of July, 1861, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French; and
- (b) to the Netherlands colony of Dutch Guiana under the terms of the Convention executed at the Hague on the eighth day of September, 1870, and ratified at the same place on the seventeenth day of February, 1872, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of the Netherlands:

Provided that emigration to the French colonies, or any of them, shall not be lawful until a notification under section 4, sub-section (1), has been issued in respect thereof; but subject to this proviso, in any case in which there is any conflict between the provisions of this Act and those contained in either of those Conventions, the latter shall prevail.



(Chap. XIV.—Supplemental. Chap. XV.—Savings and Repeals.)

Application of Act to proceedings in British India connected with emigration from French ports in India to French colonies.

105. The provisions of this Act shall, so far as they relate to proceedings which are to be conducted in British India, apply, in the case of Natives of India who depart by sea from a French port in India under an agreement to labour for hire in a French colony, under the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French referred to in the last foregoing section as if such Natives were emigrants within the meaning of this Act :

Provided that, in any case in which there is any conflict between the provisions of this Act and those contained in that Convention, the latter shall prevail.

Prohibition of departure by land of a Native of India under an agreement to labour for hire in some country beyond the sea.

106. (1) The departure by land out of British India of a Native of India under, or with a view to entering into, an agreement to labour for hire in some country beyond the sea other than the Island of Ceylon or the Straits Settlements is prohibited :

Provided that nothing in this section applies to the departure by land of a Native of India for the purpose of departing by sea from a French port in India under an agreement to labour for hire in a French colony in accordance with the Convention referred to in section 104, clause (a), and section 105.

(2) Whoever induces, or attempts to induce, any Native of India to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under section 82.

Power to declare whole or part of Act and rules inapplicable to Natives of India engaged for His Majesty's Government to labour for hire in any country beyond the sea.

107. The Governor General in Council may, by notification in the Gazette of India, declare that all or any of the provisions of this Act or the rules thereunder shall not apply, or shall apply subject to such conditions, modifications or restrictions as to the Governor General in Council may seem expedient in the case of Natives of India departing out of British India under an agreement made with, or on behalf of, His Majesty's Government to labour for hire in any country beyond the sea :

Provided that no notification under this section shall be issued unless the Governor General in Council is first satisfied that the fair treatment of Natives of India so departing out of British India has, by rules or otherwise, duly been secured.

## CHAPTER XV.

### SAVINGS AND REPEALS.

Saving for Government vessels.

108. Nothing in this Act or in any rule made under this Act shall apply to any vessel belonging to, or in the service of, His Majesty or of the Government of India.

(Chap. XV.—Savings and Repeals. The First Schedule.—Countries to which Emigration is lawful. The Second Schedule.—Form of Recruiter's License.)

VII of 1871.

109. All contracts entered into under the <sup>1</sup>Indian Emigration Act, 1871, and Act No. XIV of 1872 (to exempt the Straits Settlements from the Indian Emigration Act, 1871), or under any enactment hereby repealed, and in force at the commencement of this Act, shall, so far as they are consistent with this Act, be deemed to have been entered into under this Act. Savings.

110. The enactments mentioned in the fourth schedule are hereby repealed Repeals. to the extent specified in the fourth column thereof.

### THE FIRST SCHEDULE.

(See section 4.)

#### COUNTRIES TO WHICH EMIGRATION IS LAWFUL.

- I.—The British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis, Fiji and Seychelles.
- II.—The Netherlands Colony of Dutch Guiana.
- III.—The Danish Colony of St. Croix.

### THE SECOND SCHEDULE.

(See section 17.)

#### FORM OF RECRUITER'S LICENSE.

Office of the Protector of Emigrants at the Port of

A. B., described in the descriptive roll annexed, is hereby licensed under the Indian Emigration Act, 1908, to be a recruiter of emigrants for (*here state the country for which the recruiter is licensed to recruit*) in (*here specify the area within which the recruiter is licensed to recruit.*)

This license will be in force until the \_\_\_\_\_ of \_\_\_\_\_ unless previously cancelled.

(Signed) C. D.,  
Protector of Emigrants.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ .

<sup>1</sup> Rep. Act XXI of 1883.



(The Third Schedule.—Probable Lengths of Voyage by Sailing vessel  
under this Act.)

## THE THIRD SCHEDULE.

(See section 102.)

## PROBABLE LENGTHS OF VOYAGE BY SAILING VESSEL UNDER THIS ACT.

## FROM CALCUTTA—

To Mauritius . . . . .	{ From the month of April to the month of October, both inclusive, ten weeks; and from the month of November to the month of March, both inclusive, eight weeks.
To Fiji, British Guiana, Trinidad, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, and Dutch Guiana.	{ Eighteen weeks.
To Natal . . . . .	Twelve weeks.
To Jamaica, and St. Lucia . . . . .	Twenty weeks

## FROM MADRAS—

To Mauritius . . . . .	{ From the month of April to the month of October, both inclusive, seven weeks; and from the month of November to the month of March, both inclusive, six weeks.
To the Seychelles . . . . .	{ During the north-east monsoon, five weeks; and during the south-west monsoon, six weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, and Dutch Guiana.	{ Nineteen weeks.
To Natal . . . . .	Ten weeks.
To Fiji . . . . .	Seventeen weeks.

## FROM BOMBAY—

To Mauritius . . . . .	{ From the month of April to the month of September, both inclusive, five weeks; and from the month of October to the month of March, both inclusive, six weeks.
To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St. Croix, and Dutch Guiana.	{ Nineteen weeks.
To Natal . . . . .	Ten weeks.
To Fiji . . . . .	Seventeen weeks.

(The Fourth Schedule.—Enactments repealed )

## THE FOURTH SCHEDULE.

(See section 110.)

## ENACTMENTS REPEALED.

1	2	3	4
Year.	No	Subject or short title.	Extent of repeal.
1883	XXI	The Indian Emigration Act, 1883.	So much as has not been repealed.
1890	XVIII	The Indian Emigration Act (1883) Amendment Act, 1890.	The whole.
1896	I	The Indian Emigration Act (1883) Amendment Act, 1896.	Ditto.
1897	VII	The Indian Emigration Act Amendment Act, 1897.	Ditto.
1902	X	The Indian Emigration (Amendment) Act, 1902.	Ditto.
1904	XII	The Indian Emigration (Amendment) Act, 1904.	Ditto.
1908	XII	The Indian Emigration (Amendment) Act, 1908.	Ditto.

ACT No. XVIII OF 1908.<sup>1</sup>

[18th December 1908.]

An Act further to amend the Indian Merchant Shipping Act, 1880.

VII of 1880. WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1880 ; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Merchant Shipping (Amendment) Act, 1908 ; and Short title and commencement.

(2) Section 4 shall come into force on such date or dates as the Governor General in Council may, by notification in the Gazette of India, direct either generally for all foreign ships or specially for the ships belonging to any specified foreign countries. The rest of this Act shall come into force on the first day of January, 1909.

VII of 1880. 2. (1) In section 3, clause (b), of the Indian Merchant Shipping Act, 1880, after the word “or” the words “to any sailing ship of less than one hundred and fifty tons register employed” shall be inserted. Amendment of section 3, Act VII, 1880.

(2) To the same section the following shall be added, namely :—

“The Governor General in Council may, from time to time, by notification in the Gazette of India, exclude from or bring again within the operation of sections 33 to 43, inclusive, any class of steamships of less than one hundred and fifty tons register which are employed in plying coastwise between ports situate in India and Ceylon, and do not carry cargo.”

3. In section 4 of the said Act, in the definition of “unsafe” after the word “intended” the following words shall be inserted, namely :— Amendment of section 4 of same Act.

“and a ship shall be deemed to be unsafe when so loaded as to submerge in perfectly smooth salt water, the centre of the disc indicating the load line”

4. For section 85 of the said Act the following shall be substituted, namely :— Substitution of new section 85 of same Act.

“85. The provisions of this Act for the prevention of the overloading and improper loading of British ships and for the marking of deck and load lines on British Indian and British ships shall, with the exception of sub-sections (2) and (3) of section 35, apply to foreign ships also when in ports of British India, unless such foreign ships, if in ports of the United Kingdom, would be entitled to the benefit of a direction of His Majesty in Council under section 445 of the <sup>2</sup> Merchant Shipping Act, 1894 : Application of provisions respecting overloading and deck and load lines to foreign ships.

57 and 58  
Vic<sup>t</sup>, c. 60.

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt. V, p. 356 and for Proceedings in Council, *see* *ibid*, Pt. VI, pp. 155 and 183.

<sup>2</sup> Coll. Stat., Vol. II.

Provided that nothing in this section shall apply to any foreign ship not bound to a port in British India which comes into any port in British India for any purpose other than the purpose of embarking or landing passengers or taking in or discharging cargo or taking in bunker coal :

Provided also that in the case of the detention of a foreign ship the application of the provisions of this Act shall be subject to the following modifications, namely :—

- (i) a copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the country to which the ship belongs at or nearest to the port in which such ship is detained ;
- (ii) the consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Local Government under section 8 to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Local Government shall cause the ship to be detained or released accordingly ; but if they differ, the Local Government may act as if the requisition had not been made, and the owner and master shall have the like appeal to a Court of Survey touching the report of the surveyor as is hereinbefore provided in the case of a British ship ; and
- (iii) where the owner or master of the ship appeals to the Court of Survey the consular officer, on his request, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Local Government.”

## APPENDIX I.

## Note as to application of Civil Procedure Code (Act V of 1908) to Scheduled Districts.

The Code has been extended by Notification under section 5 of the Scheduled Districts Act, 1874 (14 of 1874), to the following Scheduled Districts:—

- |   |   |
|---|---|
| (1) The districts of Jalpaiguri, Cachar (excluding the North Cachar Hills), Sylhet, Goalpara (including the Eastern Duars), Kamrup, Darrang, Nowgong (excluding the Mikir Hill Tract), Sibsagar (excluding the Mikir Hill Tract) and Lakhimpur (excluding the Dibruigar Frontier Tracts). | Gazette of India, 1909<br>Part I, page 5.   |
| (2) Upper Burma (except the Shan States) ...  | Gazette of India, 1909,<br>Part I page 5.   |
| (3) To the Province of Sindh ...  | Bombay Government<br>Gazette Extraordinary,<br>1909, Part I, Gazette of<br>India, 1909, Part I, page<br>32. |
| (4) The districts of Darjiling and the districts of Hazaribagh, Ranchi, Palamau and Manbhum in Chota Nagpur.  | Calcutta Gazette, 1909,<br>Part I, page 25; Gazette<br>of India, 1909, Part I,<br>page 33.                  |
| (5) and under section 5 (a) to the Province of Kumaun and Garhwal and the Tarai Parganas with modifications.  | United Provinces Gazette,<br>1909, Part I, page 3;<br>Gazette of India, 1909,<br>Part I, page 31.           |
| (6) The pargana of Jaunsar Bawar in Dehra Dun and the scheduled portion of the Mirzapur District.   | United Provinces Gazette,<br>1909, Part I, page 4; and<br>Gazette of India, 1909,<br>Part I, page 32.       |
| (7) Coorg ...   | Gazette of India, 1909,<br>Part I, page 32.   |
| (8) Scheduled districts in the Punjab ...   | Gazette of India, 1909,<br>Part I, page 33.   |



- (9) The Districts of Peshawar, Hazara, Kohat, Bannu and Dera Ismail Khan composing the North-West Frontier Province. Gazette of India, 1909, Part II, page 80.
- (10) Sections 36 to 43 to all the Scheduled districts in Madras. Gazette of India, 1909, Part I, page 152.

Under section 3 (3) (a) of the Sonthal Parganas Settlement Regulation (3 of 1872), sections 38 to 42 and 156, rules 4 to 9 in Order XXI in the first Schedule have been declared in force in the Sonthal Parganas and the rest of the Code for the trial suits referred to in section 10 of the Sonthal Parganas Justice Regulation, 1893 (5 of 1893), *see* Calcutta Gazette, 1909, Part I, page 45 ; and the whole Code in the Angul District under section 5 of the Angul District Regulation, 1894 (I of 1894), Bengal Code.

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## APPENDIX II.

## Acts I to V of 1909.

ACT No. I OF 1909.<sup>1</sup>

[15th January 1909.]

An Act further to amend the Inland Steam-vessels Act, 1884,  
and the Indian Steamships Act, 1884.

VI of 1884.  
VII of 1884.

WHEREAS it is expedient further to amend the Inland Steam-vessels Act, 1884, and the <sup>2</sup> Indian Steamships Act, 1884; It is hereby enacted as follows :—

1. This Act may be called the Indian Steamships Law Amendment Act, 1909. Short title.

*The Inland Steam-vessels Act, 1884.*

VI of 1884.

2. After section 68 of the Inland Steam-vessels Act, 1884, the following shall be inserted, namely :—

“68A. The provisions of this Act shall apply to vessels which ordinarily ply on inland waters and are propelled by electricity or other mechanical power, with such modifications as the Governor General in Council may prescribe for the purpose of adaptation.”

Insertion of new section 68A in Act VI, 1884. Application of Act to vessels propelled by electricity or mechanical power.

*The Indian Steamships Act, 1884.*

VII of 1884.

3. For section 4 of the Indian Steamships Act, 1884, the following shall be substituted, namely :—

“4. No steamship shall carry more than twelve passengers between places in British India or to or from any place in British India from or to any place out of British India, unless she has a certificate of survey under this Act in force and applicable to the voyage on which she is about to proceed, or the service on which she is about to be employed.”

Substitution of new section 4, Act VII, 1884. No steamship to carry passengers without a certificate of survey.

*Steamships.*

4. For section 23 of the said Act the following shall be substituted, namely :—

“§3. (1) When a steamship requires to be furnished with a certificate of survey under this Act and the Local Government is satisfied, by the production of a certificate of survey attested by a British Consular Officer at the port where the survey was made, that the ship has been officially surveyed at a foreign port, and that the requirements of this Act are proved by that

Substitution of new section 23, Act VII, 1884. Steamships with foreign certificates of survey or certificates of partial survey.

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1908, Pt. V, p. 354; and for Proceedings in Council, see *ibid*, 1908, Pt. VI, p. 155, *ibid*, 1909, Pt. VI, p. 4.

<sup>2</sup> Genl. Acts, Vol. III.

survey to have been substantially complied with, the Local Government may, if it thinks fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give a certificate which shall have the same effect as a certificate given after survey under this Act :

Provided that this sub-section shall not apply in the case of a foreign steamship to an official survey at any foreign port with respect to which His Majesty has by Order in Council directed that section 363 of the<sup>1</sup> Merchant Shipping Act, 1894, shall not apply. 57 and 58  
Vict., c. 60.

(2) When the Local Government has, by notification in the local official Gazette, declared that it is satisfied that an official survey at any foreign port specified in the declaration is such as to prove that the requirements of this Act have been substantially complied with, any person appointed by the Local Government, by name or as holding any office, may exercise the power to dispense with a survey and to give a certificate conferred on the Local Government by sub-section (1) in the case of any steamship furnished with a valid certificate of survey granted at such foreign port and duly attested by the British Consular Officer at that port.

(3) The procedure prescribed in sub-section (1) shall be applicable in the case of steamships furnished with valid certificates of partial survey, including docking certificates, granted by the Board of Trade or any British Colonial Government, as if they were steamships furnished with like certificates of survey granted at foreign ports, subject to the modification that the powers of the Local Government under the said sub-section may be exercised by any person appointed by the Local Government, by name or as holding any office, in this behalf."

5. After section 40 of the said Act the following shall be inserted, namely :—

" 41. The provisions of this Act shall apply to ships propelled by electricity or other mechanical power, with such modifications as the Governor General in Council may prescribe for the purpose of adaptation."

Insertion  
of new  
section 40  
in same Act.  
Application  
of Act to  
ships pro-  
pelled by  
electricity or  
mechanical  
power

<sup>1</sup> Coll. Stats., Vol II.

ACT No. II OF 1909.<sup>1</sup>

[5th February 1909.]

An Act to amend the <sup>2</sup>Indian Paper Currency Act, 1905.

'1905. WHEREAS it is expedient to amend the <sup>2</sup>Indian Paper Currency Act, 1905; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Paper Currency (Amendment) Act, 1909 : and

(2) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti.

'1905. 2. In section 8, sub-section (3), of the Indian Paper Currency Act, 1905, the words "issued from any town not situate in Burma," shall be repealed.

3. For sections 14 and 15 of the said Act the following shall be substituted, namely :—

"14. A currency note of the denominational value of five rupees shall be a legal tender in any place in British India, and  
a currency note of any denominational value exceeding five rupees shall be a legal tender at any place within the circle from which the note was issued,

for the amount expressed in the note, in payment or on account of—

(a) any revenue or other claim, to the amount of five rupees or upwards, due to the Government of India, and

(b) any sum of five rupees or upwards, due by the Government of India, or by any body corporate or person in British India :

Provided that no currency note shall be deemed to be a legal tender by the Government of India at any office of issue.

"15. A currency note shall be payable at the following offices of issue, namely :—

(a) a currency note of the denominational value of five rupees, at any office of issue ;

(b) a currency note of any denominational value exceeding five rupees, at an office of issue in the town from which it was issued and also, unless issued from any town in Burma, at an office of issue in the Presidency-town of the Presidency within which such town is situate."

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1909, Pt. V, p. 2 ; and for Proceedings in Council, see *ibid*, 1909, Pt. VI, pp. 5 and 13.

<sup>2</sup> *Supra*.

## THE PRESIDENCY TOWNS INSOLVENCY ACT, 1909.

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ACT No. III OF 1909.<sup>1</sup>

[12th March 1909.]

## An Act to amend the Law of Insolvency in the Presidency-towns and the Town of Rangoon.

WHEREAS it is expedient to amend the law relating to insolvency in the Presidency-towns and the town of Rangoon; It is hereby enacted as follows :—

## PRELIMINARY.

1. (1) This Act may be called the Presidency-towns Insolvency Act, 1909. Short title and commencement

(2) It shall come into force on the first day of January 1910.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

- (a) “creditor” includes a decree-holder ;
- (b) “debt” includes a judgment-debt, and “debtor” includes a judgment-debtor ;
- (c) “official assignee” includes an acting official assignee ;
- (d) “prescribed” means prescribed by rules ;
- (e) “property” includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit ;
- (f) “rules” means rules made under this Act ;
- (g) “secured creditor” includes a landlord who under any enactment for the time being in force has a charge on land for the rent of that land ;
- (h) “the Court” means the Court exercising jurisdiction under this Act ; and
- (i) “transfer of property” includes a transfer of any interest therein and any charge created thereon.

## PART I.

## CONSTITUTION AND POWERS OF COURT.

*Jurisdiction.*

3. The Courts having jurisdiction in insolvency under this Act shall be— Courts having jurisdiction in insolvency.
- (a) the High Courts of Judicature at Fort William, Madras and Bombay, and
  - (b) the Chief Court of Lower Burma.

<sup>1</sup>For Statement of Objects and Reasons, see *Gazette of India*, 1908, Pt V, p. 275, for Report of Select Committee, see *ibid*, 1909, Pt. V, page 3; and for Proceedings in Council, see *ibid*, 1909, Pt. VI, pages 41 and 182, and *ibid*, 1909, Pt. VI, pages 12 and 22.

## (Part I.—Constitution and Powers of Court.)

Jurisdiction  
to be exercised  
by a single  
Judge.

4. All matters in respect of which jurisdiction is given by this Act shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Court, and the Chief Justice or Chief Judge shall, from time to time, assign a Judge for that purpose.

Exercise of  
jurisdiction  
in chambers.

5. Subject to the provisions of this Act and of rules, the Judge of a Court exercising jurisdiction in insolvency may exercise in chambers the whole or any part of his jurisdiction.

Delegation of  
powers to  
officers of  
Court.

6. (1) The Chief Justice or Chief Judge may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court appointed by him in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer in the exercise of the said powers shall be deemed the order or act of the Court.

(2) The powers referred to in sub-section (1) are the following, namely :—

- (a) to hear insolvency petitions presented by debtors, and to make orders of adjudication thereon;
- (b) to hold the public examination of insolvents;
- (c) to make any order or exercise any jurisdiction which is prescribed as proper to be made or exercised in chambers;
- (d) to hear and determine any unopposed or *ex parte* application;
- (e) to examine any person summoned by the Court under section 36.

(3) An officer appointed under this section shall not have power to commit for contempt of Court.

Power of  
Court to  
decide all  
question  
arising in  
insolvency

7. Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

*Appeals.*

Appeals in  
insolvency.

8. (1) The Court may review, rescind or vary any order made by it under its insolvency jurisdiction.

(2) Orders in insolvency matters shall, at the instance of any person aggrieved, be subject to appeal as follows, namely :—

- (a) an appeal from an order made by an officer of the Court empowered under section 6 shall lie to the Judge assigned under section 4 for the transaction and disposal of matters in insolvency and no further appeal shall lie except by leave of such Judge;

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

- (b) save as otherwise provided in clause (a), an appeal from an order made by a Judge in the exercise of the jurisdiction conferred by this Act shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court.

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PART II.

## PROCEEDINGS FROM ACT OF INSOLVENCY TO DISCHARGE.

*Acts of insolvency.*

9. A debtor commits an act of insolvency in each of the following cases, Acts of insolvency.  
namely :—

- (a) if, in British India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally ;
- (b) if, in British India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors ;
- (c) if, in British India or elsewhere, he makes any transfer of his property or of any part thereof, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent ;
- (d) if, with intent to defeat or delay his creditors, --
  - (i) he departs or remains out of British India,
  - (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,
  - (iii) he secludes himself so as to deprive his creditors of the means of communicating with him ;
- (e) if any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money ;
- (f) if he petitions to be adjudged an insolvent ;
- (g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts ;
- (h) if he is imprisoned in execution of the decree of any Court for the payment of money.

*Explanation.*—For the purposes of this section, the act of an agent may be the act of the principal, even though the agent have no specific authority to commit the act.

## (Part II.—Proceedings from Act of Insolvency to Discharge.)

*Order of adjudication.*

Power to adjudicate.

10. Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

*Explanation.*—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Restrictions on jurisdiction.

11. The Court shall not have jurisdiction to make an order of adjudication, unless—

- (a) the debtor is, at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary original jurisdiction ; or
- (b) the debtor, within a year before the date of the presentation of the insolvency petition, has ordinarily resided or had a dwelling-house or has carried on business either in person or through an agent within the limits of the ordinary original civil jurisdiction of the Court ; or
- (c) the debtor personally works for gain within those limits ; or
- (d) in the case of a petition by or against a firm of debtors the firm has carried on business within a year before the date of the presentation of the insolvency petition within those limits.

Conditions on which creditor may petition.

12. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(Part II.—*Proceedings from Act of Insolvency to Discharge.*)

13. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts.

Proceedings  
and order on  
creditor's  
petition.

(2) At the hearing the Court shall require proof of—

(a) the debt of the petitioning creditor, and

(b) the act of insolvency or, if more than one act of insolvency is alleged in the petition, some one of the alleged acts of insolvency.

(3) The Court may adjourn the hearing of the petition and order service thereof on the debtor.

(4) The Court shall dismiss the petition—

(a) if it is not satisfied with the proof of the facts referred to in sub-section (2); or

(b) if the debtor appears and satisfies the Court that he is able to pay his debts, or that he has not committed an act of insolvency or that for other sufficient cause no order ought to be made.

(5) The Court may make an order of adjudication if it is satisfied with the proof above referred to, or if on a hearing adjourned under sub-section (3) the debtor does not appear and service of the petition on him is proved, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(6) Where the debtor appears on the petition and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(7) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(8) A creditor's petition shall not, after presentation, be withdrawn without the leave of the Court.

14. A debtor shall not be entitled to present an insolvency petition unless—

Conditions  
on which  
debtor may  
petition.

(a) his debts amount to five hundred rupees, or

(b) he has been arrested and imprisoned in execution of the decree of any Court for the payment of money, or

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(c) an order of attachment in execution of such a decree has been made and is subsisting against his property.

Proceedings  
and order  
on debtor's  
petition.

15. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and, if the debtor proves that he is entitled to present the petition, the Court may thereupon make an order of adjudication, unless in its opinion the petition ought to have been presented before some other Court having insolvency jurisdiction.

(2) A debtor's petition shall not, after presentation, be withdrawn without the leave of the Court.

Discretionary  
powers as to  
appointment  
of interim  
receiver.

16. The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of an insolvency petition and before an order of adjudication is made, appoint the official assignee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or any part thereof, and the official assignee shall thereupon have such of the powers conferable on a receiver appointed under the <sup>1</sup> Code of Civil Procedure, 1908, as may be prescribed.

V of 1908.

Effect of  
order of  
adjudication.

17. On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose :

Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Stay of  
proceedings.

18. (1) The Court may, at any time after the making of an order of adjudication, stay any suit or other proceeding pending against the insolvent before any Judge or Judges of the Court or in any other Court subject to the superintendence of the Court.

(2) An order made under sub-section (1) may be served by sending a copy thereof, under the seal of the Court, by post to the address for service of the plaintiff or other party prosecuting such suit or proceeding, and notice of such order shall be sent to the Court before which the suit or proceeding is pending.

<sup>1</sup> *Supra*.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(3) Any Court in which proceedings are pending against a debtor may on proof that an order of adjudication has been made against him under this Act, either stay the proceedings or allow them to continue on such terms as it may think just.

19. (1) If in any case the Court, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business ought to be appointed to assist the official assignee, the Court may appoint a manager thereof accordingly to act for such time as the Court may authorize, and to have such powers of the official assignee as may be entrusted to him by the official assignee or as the Court may direct.

Power to  
appoint  
special  
manager.

(2) The special manager shall give security and furnish accounts in such manner as the Court may direct, and shall receive such remuneration as the Court may determine.

20. Notice of every order of adjudication, stating the name, address and description of the insolvent, the date of the adjudication, the Court by which the adjudication is made and the date of presentation of the petition, shall be published in the Gazette of India and in the local official Gazette and in such other manner as may be prescribed.

Advertisement  
of order of  
adjudication.

*Annulment of adjudication.*

21. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.

Power for  
Court to  
annul adjudication in  
certain cases.

(2) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full, if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

22. Where it is proved to the satisfaction of the Court that insolvency proceedings are pending in any other British Court whether within or without British India against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may annul the adjudication or may stay all proceedings thereon.

Concurrent  
proceedings  
in British  
Courts.

23. (1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official assignee or other person acting under his authority, or by the Court, shall be

Proceedings  
on annulment.



*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

valid, but the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such terms and subject to such conditions (if any) as the Court may declare by order.

(2) Where a debtor has been released from custody under the provisions of this Act and the order of adjudication is annulled as aforesaid, the Court may, if it thinks fit, recommit the debtor to his former custody, and the jailor or keeper of the prison to whose custody such debtor is so recommitted shall receive such debtor into his custody according to such recommitment, and thereupon all processes which were in force against the person of such debtor at the time of such release as aforesaid shall be deemed to be still in force against him as if such order had not been made.

(3) Notice of the order annulling an adjudication shall be published in the Gazette of India and in the local official Gazette and in such other manner as may be prescribed.

*Proceedings consequent on order of adjudication.*

Insolvent's  
schedule.

24. (1) Where an order of adjudication is made against a debtor, he shall prepare and submit to the Court a schedule verified by affidavit, in such form and containing such particulars of and in relation to his affairs as may be prescribed.

(2) The schedule shall be so submitted within the following times, namely :—

(a) if the order is made on the petition of the debtor, within thirty days from the date of the order,

(b) if the order is made on the petition of a creditor, within thirty days from the date of service of the order.

(3) If the insolvent fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the official assignee or of any creditor, make an order for his committal to the civil prison.

(4) If the insolvent fails to prepare and submit any such schedule as aforesaid, the official assignee may, at the expense of the state cause such a schedule to be prepared in manner prescribed.

Protection  
order.

25. (1) Any insolvent who shall have submitted his schedule as aforesaid may apply to the Court for protection, and the Court may, on such application, make an order for the protection of the insolvent from arrest or detention.

(2) A protection order may apply either to all the debts mentioned in the schedule or to any of them as the Court may think proper, and may commence

## (Part II.—Proceedings from Act of Insolvency to Discharge.)

and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(3) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order shall apply, and any insolvent arrested or detained contrary to the terms of such order shall be entitled to his release :

Provided that no such order shall operate to prejudice the right of any creditor in the event of such order being revoked or the adjudication annulled.

(4) Any creditor shall be entitled to appear and oppose the grant of a protection order, but the insolvent shall be *primâ facie* entitled to such order on production of a certificate signed by the official assignee that he has so far conformed to the provisions of this Act.

(5) The Court may make a protection order before an insolvent has submitted his schedule if it thinks it necessary to do so in the interests of the creditors.

26. (1) At any time after the making of an order of adjudication against an insolvent, the Court, on the application of a creditor or of the official assignee, may direct that a meeting of creditors shall be held to consider the circumstances of the insolvency and the insolvent's schedule and his explanation thereof and generally as to the mode of dealing with the property of the insolvent.

Meetings of  
creditors.

(2) With respect to the summoning of and proceedings at a meeting of creditors the rules in the First Schedule shall be observed.

27. (1) Where the Court makes an order of adjudication it shall hold a public sitting on a day to be appointed by the Court, of which notice shall be given to creditors in the prescribed manner, for the examination of the insolvent, and the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property.

Public  
examination  
of the  
insolvent.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the filing of the insolvent's schedule.

(3) Any creditor who has tendered a proof or a legal practitioner on his behalf may question the insolvent concerning his affairs and the causes of his failure

(4) The official assignee shall take part in the examination of the insolvent; and for the purpose thereof, subject to such directions as the Court may give, may be represented by a legal practitioner.

(5) The Court may put such questions to the insolvent as it may think expedient.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

(6) The insolvent shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over either to or by the insolvent and signed by him, and may thereafter be used in evidence against him and shall be open to the inspection of any creditor at all reasonable times.

(7) When the Court is of opinion that the affairs of the insolvent have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not preclude the Court from directing further examination of the insolvent whenever it may deem fit to do so.

(8) Where the insolvent is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, or is a woman who according to the customs and manners of the country ought not to be compelled to appear in public, the Court may make an order dispensing with such examination, or directing that the insolvent be examined on such terms, in such manner and at such place as to the Court seems expedient.

*Composition and schemes of arrangement.*

Submission  
of proposal  
and accep-  
tance by  
creditors.

28. (1) An insolvent may at any time after the making of an order of adjudication submit a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs in the prescribed form, and such proposal shall be submitted by the official assignee to a meeting of creditors.

(2) The official assignee shall send to each creditor who is mentioned in the schedule, or who has tendered a proof before the meeting, a copy of the insolvent's proposals with a report thereon, and if on the consideration of such proposal the majority in number and three-fourths in value of all the creditors whose debts are proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The insolvent may at the meeting amend the terms of his proposal if the amendment is in the opinion of the official assignee calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official assignee so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

29. (1) The insolvent or the official assignee may after the proposal is accepted by the creditors apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved. Approval of proposal by Court.

(2) Except where an estate is being summarily administered or special leave of the Court has been obtained, the application shall not be heard until after the conclusion of the public examination of the insolvent. Any creditor who has proved may be heard by the Court in opposition to the application notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(3) The Court shall before approving the proposal hear a report of the official assignee as to the terms thereof and as to the conduct of the insolvent and any objections which may be made by or on behalf of any creditor.

(4) Where the Court is of opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors or in any case in which the Court is required to refuse the insolvent's discharge, the Court shall refuse to approve the proposal.

(5) Where any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than four annas in the rupee on all the unsecured debts provable against the debtor's estate.

(6) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

(7) In any other case the Court may either approve or refuse to approve the proposal.

30. (1) If the Court approves the proposal, the terms shall be embodied in an order of the Court, and an order shall be made annulling the adjudication, and the provisions of section 23, sub-sections (1) and (3), shall thereupon apply, and the composition or scheme shall be binding on all the creditors so far as relates to any debt due to them from the insolvent and provable in insolvency. Order on approval.

(2) The provisions of the composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court.

## (Part II.—Proceedings from Act of Insolvency to Discharge.)

Power to  
re-adjudge  
debtor  
insolvent.

31. (1) If default is made in the payment of any instalment due in pursuance of any composition or scheme, approved as aforesaid, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, re-adjudge the debtor insolvent and annul the composition or scheme, and the property of the debtor shall thereupon vest in the official assignee but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme.

(2) Where a debtor is re-adjudged insolvent under sub-section (1), all debts provable in other respects which have been contracted before the date of such re-adjudication shall be provable in the insolvency.

Limitation of  
effect of com-  
position or  
scheme.

32. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the insolvent would not be discharged by an order of discharge in insolvency, unless the creditor assents to the composition or scheme.

*Control over person and property of insolvent.*

Duties of in-  
solvent as to  
discovery and  
realization of  
property.

33. (1) Every insolvent shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit to such examination and give such information as the meeting may require.

(2) The insolvent shall—

- (a) give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively,
- (b) submit to such examination in respect of his property or his creditors,
- (c) wait at such times and places on the official assignee or special manager,
- (d) execute such powers-of-attorney, transfers and instruments, and
- (e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors,

as may be required by the official assignee or special manager or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.

(3) The insolvent shall aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

*(Part II.—Proceedings from Act of Insolvency to Discharge)*

(4) If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the official assignee of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

34. (1) The Court may, either of its own motion or at the instance of the official assignee or of any creditor, by warrant addressed to any police-officer or prescribed officer of the Court, cause an insolvent to be arrested, and committed to the civil prison or if in prison to be detained until such time as the Court may order, under the following circumstances, namely :—

Arrest of insolvent.

- (a) if it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in insolvency against him ; or
- (b) if it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his insolvency ; or
- (c) if he removes any property in his possession above the value of fifty rupees without the leave of the official assignee.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

35 Where the official assignee has been appointed interim receiver or an order of adjudication is made, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, all post letters, whether registered or unregistered, parcels and money orders addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, or delivered by the Postal authorities in British India, to the official assignee, or otherwise as the Court directs ; and the same shall be done accordingly.

Redirection of letters.

36. (1) The Court may, on the application of the official assignee or of any creditor who has proved his debt, at any time after an order of adjudication has been made, summon before it in such manner as may be prescribed

Discovery of insolvent's property.

## (Part II.—Proceedings from Act of Insolvency to Discharge.)

the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent, or supposed to be indebted to the insolvent, or any person whom the Court may deem capable of giving information respecting the insolvent, his dealings or property; and the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine any person so brought before it concerning the insolvent, his dealings or property, and such person may be represented by a legal practitioner.

(4) If on the examination of any such person the Court is satisfied that he is indebted to the insolvent, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) If, on the examination of any such person, the Court is satisfied that he has in his possession any property belonging to the insolvent, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

(6) Orders made under sub-sections (4) and (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the <sup>1</sup> Code of Civil Procedure, 1908, respectively.

V of 1908.

(7) Any person making any payment or delivery in pursuance of an order made under sub-section (4) or sub-section (5) shall by such payment or delivery be discharged from all liability whatsoever in respect of such debt or property.

Power to issue  
commissions.

37. The Court shall have the same powers to issue commissions and letters of request for the examination on commission or otherwise of any person liable to examination under section 36 as it has for the examination of witnesses under the Code of Civil Procedure, 1908.

V of 1908.

<sup>1</sup> *Supra*.

## (Part II.—Proceedings from Act of Insolvency to Discharge.)

*Discharge of Insolvent.*

38. (1) An insolvent may, at any time after the order of adjudication, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but, save where the public examination of the insolvent has been dispensed with under the provisions of this Act, the application shall not be heard until after such examination has been concluded. The application shall be heard in open Court.

Discharge of insolvent.

(2) On the hearing of the application, the Court shall take into consideration any report of the official assignee as to the insolvent's conduct and affairs and, subject to the provisions of section 39, may—

- (a) grant or refuse an absolute order of discharge, or
- (b) suspend the operation of the order for a specified time, or
- (c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

39. (1) The Court shall refuse the discharge in all cases where the insolvent has committed any offence under this Act, or under sections 421 to 424 of the Indian Penal Code, and shall, on proof of any of the facts hereinafter mentioned, either—

Cases in which the Court must refuse an absolute discharge.

- (a) refuse the discharge ; or
- (b) suspend the discharge for a specified time ; or
- (c) suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors ; or
- (d) require the insolvent as a condition of his discharge to consent to a decree being passed against him in favour of the official assignee for any balance or part of any balance of the debts provable under the insolvency which is not satisfied at the date of his discharge ; such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the insolvent in such manner and subject to such conditions as the Court may direct ; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the insolvent has since his discharge acquired property or income available for payment of his debts.

(2) The facts hereinbefore referred to are—

- (a) that the insolvent's assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of



## (Part II.—Proceedings from Act of Insolvency to Discharge.)

such value has arisen from circumstances for which he cannot justly be held responsible ;

- (b) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency ;
- (c) that the insolvent has continued to trade after knowing himself to be insolvent ;
- (d) that the insolvent has contracted any debt provable under this Act without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it ;
- (e) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities ;
- (f) that the insolvent has brought on or contributed to his insolvency by rash or hazardous speculations or by unjustifiable extravagance in living or by gambling, or by culpable neglect of his business affairs ;
- (g) that the insolvent has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit properly brought against him ;
- (h) that the insolvent has within three months preceding the time of presentation of the petition incurred unjustifiable expense by bringing a frivolous or vexatious suit ;
- (i) that the insolvent has within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors ;
- (j) that the insolvent has concealed or removed his books or his property or any part thereof or has been guilty of any other fraud or fraudulent breach of trust

(3) The power of suspending and of attaching conditions to an insolvent's discharge may be exercised concurrently.

(4) On any application for discharge the report of the official assignee shall be *primâ facie* evidence and the Court may presume the correctness of any statement contained therein.

*(Part II.—Proceedings from Act of Insolvency to Discharge.)*

40. Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee and may also hear any creditor. At the hearing the Court may put such questions to the insolvent and receive such evidence as it may think fit.

Hearing of application for discharge.

41. If an insolvent does not appear on the day so appointed for hearing his application for discharge or if an insolvent shall not apply to the Court for an order of discharge within such time as may be prescribed, the Court, on the application of the official assignee or of a creditor or of its own motion, may annul the adjudication or make such other order as it may think fit, and the provisions of section 23 shall apply on such annulment.

Power to annul adjudication on failure to apply for discharge.

42. (1) Where the Court refuses the discharge of the insolvent it may, after such time and in such circumstances as may be prescribed, permit him to renew his application.

Renewal of application and variation of terms of order.

(2) Where an order of discharge is made subject to conditions and at any time after the expiration of two years from the date of the order the insolvent shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

43. A discharged insolvent shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and, if he fails to do so, shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Duty of discharged insolvent to assist in realization of property.

44. In either of the following cases, that is to say :—

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

Fraudulent settlements.

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged insolvent or compounds or arranges with his

(Part II.—*Proceedings from Act of Insolvency to Discharge.* Part  
III.—*Administration of Property*)

creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement.

Effect of  
order of  
discharge.

45. (1) An order of discharge shall not release the insolvent from—

- (a) any debt due to the Crown ;
- (b) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party ; or
- (c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party ; or
- (d) any liability under an order for maintenance made under section 488 of the <sup>1</sup> Code of Criminal Procedure, 1898.

V of 1898.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts provable in insolvency.

(3) An order of discharge shall be conclusive evidence of the insolvency and of the validity of the proceedings therein.

(4) An order of discharge shall not release any person who at the date of the presentation of the petition was a partner or co-trustee with the insolvent or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

### PART III.

#### ADMINISTRATION OF PROPERTY.

##### *Proof of debts.*

Debts provable in insolvency.

46. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable in insolvency.

(2) A person having notice of the presentation of any insolvency petition by or against the debtor shall not prove for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as provided by sub-sections (1) and (2), all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable in insolvency.

<sup>1</sup> Genl. Acts, Vol. V.

## (Part III.—Administration of Property.)

(4) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value :

Provided that if in his opinion the value of the debt or liability is incapable of being fairly estimated, he shall issue a certificate to that effect, and thereupon the debt or liability shall be deemed to be a debt not provable in insolvency.

*Explanation.*—For the purposes of this section “liability” includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money’s worth on the breach of any express or implied covenant, contract, agreement or undertaking whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor, and generally it includes any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money, or money’s worth, whether the payment is, as respects amount, fixed or unliquidated ; as respects time, present or future, certain or dependent on any contingency or contingencies ; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

47. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively :

Mutual dealings and set-off.

Provided that a person shall not be entitled under this section to claim the benefits of any set-off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

48. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the rules in that schedule shall be observed.

Rules as to proof of debts.

49. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

Priority of debts.

(a) all debts due to the Crown or to any local authority ;

(b) all salary or wages of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the

*(Part III.—Administration of Property.)*

date of the presentation of the petition, not exceeding three hundred rupees for each such clerk, and one hundred rupees for each such servant or labourer, and

- (c) rent due to a landlord from the insolvent : provided the amount payable under this clause shall not exceed one month's rent.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as a part of the partnership property ; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Act, all debts proved in insolvency shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency.

Rent due  
before adju-  
dication.<sup>2</sup>

50. After an order of adjudication has been made no distress for rent due before such order shall be made upon the goods or effects of the insolvent, unless the order be annulled, but the landlord or party to whom the rent may be due shall be entitled to prove in respect of such rent.

*Property available for payment of debts.*

Relation of  
assignee's  
title.

51. The insolvency of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to and to commence at—

- (a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or

## (Part III.—Administration of Property.)

- (b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition :

Provided that no insolvency petition or order of adjudication shall be rendered invalid by reason of any act of insolvency committed anterior to the debt of the petitioning creditor.

52. (1) The property of the insolvent divisible amongst his creditors, and in this Act referred to as the property of the insolvent, shall not comprise the following particulars, namely :—

Description  
of insolvent's  
property  
divisible  
amongst  
creditors.

- (a) property held by the insolvent on trust for any other person ;  
(b) the tools (if any) of his trade and the necessary wearing apparel, bedding, cooking vessels, and furniture of himself, his wife and children, to a value, inclusive of tools and apparel and other necessities as aforesaid, not exceeding three hundred rupees in the whole.

(2) Subject as aforesaid, the property of the insolvent shall comprise the following particulars, namely :—

- (a) all such property as may belong to or be vested in the insolvent at the commencement of the insolvency or may be acquired by or devolve on him before his discharge ;  
(b) the capacity to exercise and to take proceedings for exercising a such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge ; and  
(c) all goods being at the commencement of the insolvency in the possession, order or disposition of the insolvent, in his trade or business by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof :

Provided that things in action other than debts due or growing due to the insolvent in the course of his trade or business shall not be deemed goods within the meaning of clause (c) :

Provided also that the true owner of any goods which have become divisible among the creditors of the insolvent under the provisions of clause (c) may prove for the value of such goods.

*Effect of insolvency on antecedent transactions.*

53. 1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realized in the course of the ex-

Restriction  
of rights of  
creditor  
under exe-  
cution.

## (Part III.—Administration of Property.)

cution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor.

(2) Nothing in this section shall affect the right of a secured creditor in respect of property against which a decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

Duties of  
Court exe-  
cuting decree  
as to property  
taken in exe-  
cution.

54. Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance  
of voluntary  
transfer.

55. Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.

Avoidance  
of preference  
in certain  
cases.

56. (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.

Protection of  
*bona fide*  
transactions.

57. Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency—

- (a) any payment by the insolvent to any of his creditors ;
- (b) any payment or delivery to the insolvent ;
- (c) any transfer by the insolvent for valuable consideration ; or

## (Part III.—Administration of Property.)

(d) any contract or dealing by or with the insolvent for valuable consideration :

Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor.

*Realization of property.*

58. (1) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of his property capable of manual delivery.

Possession of property by official assignee.

(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the <sup>1</sup> Code of Civil Procedure, 1908, and the Court may on his application enforce such acquisition or retention accordingly.

V of 1908.

(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not become insolvent.

(4) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee.

(5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee.

59. (1) The Court may grant a warrant to any prescribed officer of the Court or any police-officer above the rank of a constable to seize any part of the property of an insolvent in the custody or possession of the insolvent or of any other person, and with a view to such seizure to break open any house, building or room of the insolvent where the insolvent is supposed to be, or any building or receptacle of the insolvent where any of his property is supposed to be.

Seizure of property of insolvent.

<sup>1</sup> Genl. Acts., Vol. V.



## (Part III.—Administration of Property.)

(2) Where the Court is satisfied that there is reason to believe that property of the insolvent is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any such officer as aforesaid who may execute it according to its tenor.

Appropriation  
of portion of  
pay or other  
income to  
creditors.

60. (1) Where an insolvent is an officer of the Army or Navy or of His Majesty's Royal Indian Marine Service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the insolvent's pay or salary liable to attachment in execution of a decree as the Court may direct.

(2) Where an insolvent is in the receipt of a salary or income other than as aforesaid, the Court may, at any time after adjudication and from time to time, make such order as it thinks just for the payment to the official assignee, for distribution among the creditors of so much of such salary or income as may be liable to attachment in execution of a decree, or of any portion thereof.

Vesting and  
transfer of  
property.

61. The property of the insolvent shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any transfer whatever.

Disclaimer  
of onerous  
property.

62. (1) Where any part of the property of an insolvent consists of land of any tenure burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee may, notwithstanding that he may have endeavoured to sell or have taken possession of the property, or exercised any act of ownership in relation thereto, but subject always to the provisions hereinafter contained in that behalf, by writing signed by him at any time within twelve months after the insolvent has been adjudged insolvent, disclaim the property :

Provided that, where any such property has not come to the knowledge of the official assignee within one month after such adjudication as aforesaid, he may disclaim the property at any time within twelve months after he has first become aware thereof.

(2) The disclaimer shall operate to determine, as from the date thereof, the rights, interest and liabilities of the insolvent and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the insolvent and his property and the

*(Part III.—Administration of Property.)*

official assignee from liability, affect the rights or liabilities of any other person.

63. Subject always to such rules as may be made in this behalf, the official assignee shall not be entitled to disclaim any leasehold interest without the leave of the Court; and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

Disclaimer of leaseholds.

64. The official assignee shall not be entitled to disclaim any property in pursuance of section 62 in any case where an application in writing has been made to the official assignee by any person interested in the property requiring him to decide whether he will disclaim, and the official assignee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice that he disclaims the property; and in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

Power to call on official assignee to disclaim.

65. The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit or subject to the burden of a contract made with the insolvent, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the insolvency.

Power for Court to rescind contract.

66. (1) The Court may, on the application of any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any transfer for the purpose:

Power for Court to make vesting order in respect of disclaimed property.

Provided always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the insolvent, whether as under-lessee or as mortgagee except upon the

*(Part III.—Administration of Property.)*

terms of making such person subject to the same liabilities and obligations as the insolvent was subject to under the lease in respect of the property at the date when the insolvency petition was filed, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the insolvent who is willing to accept an order upon such terms, the Court shall have power to vest the insolvent's interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the insolvent, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the insolvent.

(2) The Court may, if it thinks fit, modify the terms prescribed by the foregoing proviso so as to make a person in whose behalf the vesting order may be made subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the insolvency petition was filed and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

Persons  
injured by  
disclaimer  
may prove.

67. Any person injured by the operation of a disclaimer under the foregoing provisions shall be deemed to be a creditor of the insolvent to the amount of the injury, and may accordingly prove the same as a debt under the insolvency.

Duty and  
powers of  
official  
assignee as to  
realization.

68. (1) Subject to the provisions of this Act, the official assignee shall, with all convenient speed, realize the property of the insolvent, and for that purpose may—

- (a) sell all or any part of the property of the insolvent ;
- (b) give receipts for any money received by him ;

and may, by leave of the Court, do all or any of the following things, namely :—

- (c) carry on the business of the insolvent so far as may be necessary for the beneficial winding up of the same ;
- institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent ;
- (e) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the Court ;
- (f) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time

*(Part III.—Administration of Property.)*

or fully paid shares, debentures or debenture stock in any limited company subject to such stipulations as to security and otherwise as the Court thinks fit ;

- (g) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts or for the purpose of carrying on the business ;
- (h) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon ;
- (i) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

(2) The official assignee shall account to the Court and pay over all monies and deal with all securities in such manner as is prescribed or as the Court directs.

*Distribution of property.*

69. (1) The official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

Declaration and distribution of dividends.

(2) The first dividend (if any) shall be declared and be distributed within six months after the adjudication, unless the official assignee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend, the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the insolvent's schedule who has not proved his debt.

(5) When the official assignee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend, and when and how it is payable, and if required by any creditor a statement in the prescribed form as to the particulars of the estate.

70. Where one partner in a firm is adjudged insolvent, a creditor to whom the insolvent is indebted jointly with the other partners in the firm or any of them shall not receive any dividend out of the separate property of the insolvent until all the separate creditors have received the full amount of

Joint and separate properties.

Calculation  
of dividends.

71. (1) In the calculation and distribution of dividends, the official assignee shall retain in his hands sufficient assets to meet—

- (a) debts provable in insolvency and appearing from the insolvent's statements or otherwise to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;
- (b) debts provable in insolvency the subject of claims not yet determined;
- (c) disputed proofs or claims; and
- (d) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

Right of  
creditor who  
has not  
proved debt  
before decla-  
ration of a  
dividend.

72. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends which he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final  
dividend.

73. (1) When the official assignee has realized all the property of the insolvent, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in insolvency, he shall, with the leave of the Court, declare a final dividend; but, before so doing, he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him but not proved that, if they do not prove their claims, to the satisfaction of the Court, within the time limited by the notice, he will proceed to make a final dividend without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the insolvent shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No suit for  
dividend.

74. No suit for a dividend shall lie against the official assignee, but, where the official assignee refuses to pay any dividend, the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application.

(Part III.—Administration of Property. Part IV.—Official Assignees.)

75. (1) Subject to such conditions and limitations as may be prescribed, the official assignee may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct.

Power to allow insolvent to manage property, and allowance to insolvent for maintenance or service.

(2) Subject as aforesaid, the Court may, from time to time, make such allowance as it thinks just to the insolvent out of his property, for the support of the insolvent and his family, or in consideration of his services, if he is engaged in winding up his estate, but any such allowance may at any time be varied or determined by the Court.

76. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as provided by this Act and of the expenses of the proceedings taken thereunder.

Right of insolvent to surplus.

## PART IV.

### OFFICIAL ASSIGNEES.

77. (1) The Chief Justice of each of the High Courts of Judicature at Fort William, Madras and Bombay, and the Chief Judge of the Chief Court of Lower Burma, may from time to time appoint substantively or temporarily such person as he thinks fit to the office of official assignee of insolvents' estates for each of the said Courts respectively, and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding that office for any cause appearing to the Court sufficient.

Appointment and removal of official assignees of insolvent's estate.

(2) Every official assignee shall give such security and shall be subject to such rules and shall act in such manner as may be prescribed.

(3) Notwithstanding anything in sub-section (1), the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the relief of Insolvent Debtors at Calcutta, Madras and Bombay respectively under the <sup>1</sup> Indian Insolvency Act, 1848, and in the Chief Court of Lower Burma under that Act as applied by the <sup>2</sup> Lower Burma Courts Act, 1900, shall, without further appointment for that purpose, become the official assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay and in the Chief Court of Lower Burma, respectively.

11 & 12  
Vic., c. 21.

VI of 1900.

<sup>1</sup> Coll. Stats., Vol. I.

<sup>2</sup> Bur. Code.

Power to  
administer  
oath.

78. An official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

Duties as  
regards the  
insolvent's  
conduct.

79. (1) The duties of an official assignee shall have relation to the conduct of the insolvent as well as to the administration of his estate.

(2) In particular it shall be the duty of the official assignee—

(a) to investigate the conduct of the insolvent and to report to the Court upon any application for discharge, stating whether there is reason to believe that the insolvent has committed any act which constitutes an offence under this Act or under sections 421 to 424 of the ' Indian Penal Code in connection with his insolvency or which would justify the Court in refusing, suspending or qualifying an order for his discharge ;

XLV of 1860.

(b) to make such other reports concerning the conduct of the insolvent as the Court may direct or as may be prescribed ; and

(c) to take such part and give such assistance in relation to the prosecution of any fraudulent insolvent as the Court may direct or as may be prescribed.

Duty  
to furnish  
list of  
creditors.

80. The official assignee shall, whenever required by any creditor so to do and on payment by the creditor of the prescribed fee, furnish and send to the creditor by post a list of the creditors showing in the list the amount of the debt due to each of the creditors.

Remunera-  
tion.

81. (1) Such remuneration shall be paid to the official assignee as may be prescribed.

(2) No remuneration whatever beyond that referred to in sub-section (1) shall be received by an official assignee as such.

Misfeasance.

82. The Court shall call the official assignee to account for any misfeasance, neglect or omission which may appear in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the insolvent may have sustained by reason of the misfeasance, neglect or omission.

Name under  
which to sue  
or be sued.

83. The official assignee may sue and be sued by the name of "the official assignee of the property of \_\_\_\_\_, an insolvent," inserting the name of the insolvent, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

(Part IV.—*Official Assignees.* Part V.—*Committee of Inspection.*)

84. If an order of adjudication is made against an official assignee, he shall thereby vacate the office of official assignee. Office vacated by insolvency.

85. (1) Subject to the provisions of this Act and to the directions of the Court, the official assignee shall, in the administration of the property of the insolvent and in the distribution thereof amongst his creditors, have regard to any resolution that may be passed by the creditors at a meeting. Discretionary powers and control thereof.

(2) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors who have proved.

(3) The official assignee may apply to the Court for directions in relation to any particular matter arising under the insolvency.

(4) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

86. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the official assignee, he may appeal to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just. Appeal to Court.

87. (1) If any official assignee does not faithfully perform his duties and duly observe all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or if any complaint is made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient. Control of Court.

(2) The Court may at any time require any official assignee to answer any enquiry made by it in relation to any insolvency in which he is engaged, and may examine him or any other person on oath concerning the insolvency.

(3) The Court may also direct an investigation to be made of the books and vouchers of the official assignee.

## PART V.

### COMMITTEE OF INSPECTION.

88. The Court may, if it so thinks fit, authorize the creditors who have proved to appoint from among the creditors or holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the insolvent's property by the official assignee : Committee of inspection.



(Part V.—Official Assignees. Part VI.—Procedure.)

Provided that a creditor who is appointed a member of a committee of inspection shall not be qualified to act until he has proved.

Control of  
committee  
of inspection  
over official  
assignee.

89. The committee shall have such powers of control over the proceedings of the official assignee as may be prescribed.

## PART VI.

### PROCEDURE.

Powers of  
the Court.

90. (1) In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction :

Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act.

(2) Subject to the provisions of this Act and rules, the costs of and incidental to any proceeding in the Court shall be in the discretion of the Court.

(3) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(4) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(5) Where by this Act or by rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(6) Subject to rules, the Court may in any matter take the whole or any part of the evidence either *vivâ voce* or by interrogatories, or upon affidavit, or by commission.

(7) For the purpose of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

(8) For the purposes of this Act the Chief Court of Lower Burma shall have all the powers to punish for contempt of Court which are possessed by the High Courts of Judicature at Fort William, Madras and Bombay respectively.

Consolidation  
of petitions.

91. Where two or more insolvency petitions are presented against the same debtor or against joint debtors, or where joint debtors file separate petitions, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

## (Part VI.—Procedure.)

92. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor.

Power to charge carriage of petition.

93. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Continuance of proceedings on death of debtor.

94. The Court may, at any time, for sufficient reason, make an order staying the proceedings under an insolvency petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

Power to stay proceedings.

95. Any creditor whose debt is sufficient to entitle him to present an insolvency petition against all the partners in a firm may present a petition against any one or more partners in the firm without including the others.

Power to present petition against a partner.

96. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them.

Power to dismiss petition against some respondents only.

97. Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution ; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Separate insolvency petitions against partners.

98. (1) Where a partner in a firm is adjudged insolvent, the Court may authorize the official assignee to continue or commence and carry on any suit or other proceeding in his name and that of the insolvent's partner ; and any release by the partner of the debt or demand to which the proceeding relates shall be void.

Suits by official assignee and insolvent's partners.

(2) Where application for authority to continue or commence any suit or other proceeding has been made under sub-section (1), notice of the application shall be given to the insolvent's partner and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

99. (1) Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm :

Proceedings in partnership name.

(Part VI.—Procedure. Part VII.—Limitation. Part VIII.—Penalties.)

Provided that in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner and verified on oath or otherwise, as the Court may direct.

(2) In the case of a firm in which one partner is an infant, an adjudication order may be made against the firm other than the infant partner.

Warrants of  
Insolvency  
Courts.

100. (1) A warrant of arrest issued by the Court may be executed in the same manner and subject to the same conditions as a warrant of arrest issued under the <sup>1</sup> Code of Criminal Procedure, 1898, may be executed. V of 1898.

(2) A warrant to seize any part of the property of an insolvent, issued by the Court under section 59, sub-section (1), shall be in the form prescribed, and sections 77 (2), 79, 82, 83, 84 and 102 of the said Code shall, so far as may be, apply to the execution of such warrant.

(3) A search-warrant issued by the Court under section 59, sub-section (2), may be executed in the same manner and subject to the same conditions as a search-warrant for property supposed to be stolen may be executed under the said Code.

## PART VII.

### LIMITATION.

Limitation  
of appeals.

101. The period of limitation for an appeal from any act or decision of the official assignee or from an order made by an officer of the Court empowered under section 6 shall be twenty days from the date of such act, decision or order, as the case may be.

## PART VIII.

### PENALTIES.

Undischarged  
insolvent  
obtaining  
credit.

102. An undischarged insolvent obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an undischarged insolvent shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Punishment  
of insolvents  
for certain  
offences.

103. Any person adjudged insolvent who—

(a) fraudulently with the intent to conceal the state of his affairs or to defeat the objects of this Act,

<sup>1</sup> Genl. Acts, Vol. V.

*(Part VIII.—Penalties.)*

- (i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any books, paper or writing relating to such of his affairs as are subject to investigation under this Act, or
- (ii) has kept or caused to be kept false books, or
- (iii) has made false entries in or withheld entries from, or wilfully altered or falsified, any book, paper or writing relating to such of his affairs as are subject to investigation under this Act, or
- (b) fraudulently with intent to diminish the sum to be divided amongst his creditors or of giving an undue preference to any of the said creditors,
- (i) has discharged or concealed any debt due to or from him, or
- (ii) has made away with, charged, mortgaged or concealed any part of his property of what kind soever,

shall on conviction be punishable with imprisonment for a term which may extend to two years.

104. (1) Where the official assignee reports to the Court that in his opinion an insolvent has been guilty of any offence under section 103, or where the Court is satisfied upon the representation of any creditor that there is ground to believe that the insolvent has been guilty of any such offence, the Court may direct that a notice be served on the insolvent in the prescribed manner to show cause why a charge or charges should not be framed against him.

Procedure on charge under section 103.

(2) The notice shall set forth the substance of the offence and any number of offences may be set forth in the same notice.

(3) At the hearing of such notice and of any charge framed in pursuance thereof the Court shall, so far as may be, follow the procedure for the trial of warrant cases by Magistrates prescribed by Chapter XXI of the <sup>1</sup> Code of Criminal Procedure, 1898, and nothing in Chapter XXIII of the said Code relating to trials before High Courts and Courts of Session shall be applicable to such trial.

(4) Any number of offences under this Act may be charged at the same time.

105. Where an insolvent has been guilty of any of the offences specified in section 102 or section 103, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Criminal liability after discharge or composition.

V of 1898.

<sup>1</sup> Genl. Ac's, Vol. V.

(Part IX.—*Small Insolvencies.* Part X.—*Special Provisions.*)

## PART IX.

### SMALL INSOLVENCIES.

Summary  
administra-  
tion in  
small cases.

106. (1) Where the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of an insolvent is not likely to exceed in value three thousand rupees or such other less amount as may be prescribed, the Court may make an order that the insolvent's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

- (a) no appeal shall lie from any order of the Court, except by leave of the Court;
- (b) no examination of the insolvent shall be held except on the application of a creditor or the official assignee;
- (c) the estate shall, where practicable, be distributed in a single dividend;
- (d) such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Act relating to the discharge of the insolvent.

(2) The Court may at any time, if it thinks fit, revoke an order for the summary administration of an insolvent's estate.

## PART X.

### SPECIAL PROVISIONS.

Exemption of  
corporation,  
etc., from  
insolvency  
proceedings.

Administra-  
tion in insol-  
vency of  
estate of  
person dying  
insolvent.

107. No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

108. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support an insolvency petition against the debtor, had he been alive, may present to the Court within the limits of whose ordinary original civil jurisdiction the debtor resided or carried on business for the greater part of the six months immediately prior to his decease, a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor under this Act.

(2) Upon the prescribed notice being given to the legal representative of the deceased debtor, the Court may, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in insolvency of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

*(Part X.—Special Provisions.)*

(3) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor's estate; but that Court may in that case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in insolvency under this Act, and thereupon the last-mentioned Court may make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

109. (1) Upon an order being made for the administration of a deceased debtor's estate under section 108, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

Vesting of estate and mode of administration.

(2) With the modification hereinafter mentioned, all the provisions of Part III, relating to the administration of the property of an insolvent, shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act.

(3) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(4) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of insolvency, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

110. (1) After notice of the presentation of a petition under section 108 no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee.

Payments or transfer by legal representatives.

(2) Save as aforesaid nothing in section 108 or section 109 or this section shall invalidate any payment made or act or thing done in good faith by the legal representative or by a District Judge acting under the powers conferred on him by section 64 of the Administrator General's Act, 1874, before the date of the order for administration.

Saving of  
jurisdiction  
of Administra-  
tor General.

111. The provisions of sections 108, 109 and 110 shall not apply to any case in which probate or letters of administration to the estate of a deceased debtor have been granted to an Administrator General.

## PART XI.

### RULES.

Rules.

112. (1) The Courts having jurisdiction under this Act may from time to time make rules for carrying into effect the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

- (a) the fees and percentages to be charged under this Act and the manner in which the same are to be collected and accounted for and the account to which they are to be paid;
- (b) the investment, whether separately or collectively, of unclaimed dividends, balances and other sums appertaining to the estates of insolvent debtors whether adjudicated insolvent under this or any former enactment; and the application of the proceeds of such investment;
- (c) The proceedings of the official assignee in taking possession of and realising the estates of insolvent debtors;
- (d) the remuneration of the official assignee;
- (e) the receipts, payments and accounts of the official assignee;
- (f) the audit of the accounts of the official assignee;
- (g) the payment of the remuneration of the official assignee, of the costs, charges and expenses of his establishment, and of the costs of the audit of his accounts out of the proceeds of the investments in his hands;
- (h) the payment of the costs incurred in the prosecution of fraudulent debtors and in legal proceedings taken by the official assignee under the direction of the Court out of the proceeds aforesaid;
- (i) the payment of any civil liability incurred by an official assignee acting under the order or direction of the Court;
- (j) the proceedings to be taken in connection with proposals for composition and schemes of arrangement with the creditors of insolvent debtors;
- (k) the intervention of the official assignee at the hearing of applications and matters relating to insolvent debtors and their estates;

## (Part XI.—Rules. Part XII.—Supplemental.)

- (l) the examination by the official assignee of the books and papers of account of undischarged insolvent debtors ;
- (m) the service of notices in proceedings under this Act ;
- (n) the appointment, meetings and procedure of committees of inspection ;
- (o) the conduct of proceedings under this Act in the name of a firm ;
- (p) the forms to be used in proceedings under this Act ;
- (q) the procedure to be followed in the case of estates to be administered in a summary manner ;
- (r) the procedure to be followed in the case of estates of deceased persons to be administered under this Act.

113. Rules made under the provisions of this Part shall be subject, in the case of the High Court of Judicature at Fort William in Bengal, to the previous sanction of the Governor General in Council, and, in the case of any other Court, of the Local Government. Sanction to rules.

114. Rules so made and sanctioned shall be published in the Gazette of India or in the local official Gazette, as the case may be, and shall thereupon have the same force and effect with regard to proceedings under this Act in the Court which made them as if they had been enacted in this Act. Publication of rules.

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## PART XII.

### SUPPLEMENTAL.

115. (1) Every transfer, mortgage, assignment, power-of-attorney, proxy paper, certificate, affidavit, bond or other proceedings, instrument or writing whatsoever before or under any order of the Court, and any copy thereof shall be exempt from payment of any stamp or other duty whatsoever. Exemption from duty of transfers, etc., under this Act.

(2) No stamp-duty or fee shall be chargeable for any application made by the official assignee to the Court under this Act, or for the drawing and issuing of any order made by the Court on such application.

116. (1) A copy of the official Gazette containing any notice inserted in pursuance of this Act shall be evidence of the facts stated in the notice. The Gazette to be evidence

(2) A copy of the official Gazette containing any notice of an order of adjudication shall be conclusive evidence of the order having been duly made, and of its date.

117. Any affidavit may be used in a Court having jurisdiction under this Act if it is sworn— Swearing of affidavits.

- (a) in British India, before—
- (i) any Court or Magistrate, or



(ii) any officer or other person appointed to administer oaths under the Code of Civil Procedure, 1908 ;

V of 1908.

(b) in England, before any person authorized to administer oaths in His Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorized in writing in that behalf by the Judge of the Court or before a Justice of the Peace for the county or place where it is sworn ;

(c) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace ; and,

(d) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul or British Political Agent or by a notary public).

Formal defect  
not to invali-  
date proceed-  
ings

118. (1) No proceeding in insolvency shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an official assignee or member of a committee of inspection shall vitiate any act done by him in good faith.

Application  
of Trustee  
Act to insol-  
vency of  
trustee.

119. Where an insolvent is a trustee within the <sup>1</sup> Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the insolvent (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly. XXVII of 1866.

Certain pro-  
visions to  
bind the  
Crown.

120. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

Saving for  
existing  
rights of  
audience.

121. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act, or shall be deemed to confer such right in insolvency matters on any person who had not a right of audience before the Courts for the Relief of Insolvent Debtors.

<sup>1</sup> Genl. Acts, Vol. I.

## (Part XII.—Supplemental.)

122. Where the official assignee has under his control any dividend which has remained unclaimed for fifteen years from the date of declaration or such less period as may be prescribed, he shall pay the same to the account and credit of the Government of India, unless the Court otherwise directs.

Lapse and credit to Government of unclaimed dividends

123. Any person claiming to be entitled to any monies paid to the account and credit of the Government of India under section 122, may apply to the Court for an order for payment to him of the same ; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due :

Claims to monies credited to Government under section 122.

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

124. (1) No person shall, as against the official assignee, be entitled to withhold possession of the books of accounts belonging to the insolvent or to set up any lien thereon.

Access to insolvent's books.

(2) Any creditor of the insolvent may, subject to the control of the Court, and on payment of such fee, if any, as may be prescribed, inspect at all reasonable times, personally or by agent, any such books in the possession of the official assignee.

125. Such fees and percentages shall be charged for and in respect of proceedings under this Act as may be prescribed.

Fees and percentages.

126. All Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to section 118 of the <sup>1</sup> Bankruptcy Act, 1883, and to section 50 of the <sup>2</sup> Provincial Insolvency Act, 1907.

Courts to be auxiliary to each other.

46 and 47  
Vict., c. 52.  
III of 1907.

127. (1) The enactments mentioned in the third schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeal of enactments.

(2) Notwithstanding the repeal effected by this Act, the proceedings under an insolvency petition under the Indian Insolvency Act, 1848, pending at the commencement of this Act shall, except so far as any provisions of this Act is expressly applied to pending proceedings, continue, and all the provisions of the said Indian Insolvency Act shall, except as aforesaid, apply thereto, as if this Act had not been passed.

11 and 12  
Vict., c. 21.

<sup>1</sup> Coll. Stats., Vol. II.

<sup>2</sup> *Supra*.

*(The First Schedule.—Meetings of Creditors.)*

## THE FIRST SCHEDULE.

*(See section 26.)*

## MEETINGS OF CREDITORS.

Meetings of  
creditors.

1. The official assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court or by the creditors by resolution at any meeting or whenever requested in writing by one-fourth in value of the creditors who have proved.

Summoning  
of meetings.

2. Meetings shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the insolvent's schedule, or such other address as may be known to the official assignee.

Notice of  
meetings.

3. The notice of any meeting shall be sent off not less than seven days before the day appointed for the meeting and may be delivered personally or sent by prepaid post letter, as may be convenient. The official assignee may, if he thinks fit, also publish the time and place of any meeting in any local newspaper or in the local official Gazette.

Duty of  
insolvent to  
attend if  
required.

4. It shall be the duty of the insolvent to attend any meeting which the official assignee may, by notice, require him to attend, and any adjournment thereof. Such notice shall be either delivered to him personally or sent to him at his address by post at least three days before the date fixed for the meeting.

Proceedings  
not to be  
avoided for  
non-receipt of  
notice.

5. The proceedings held and resolutions passed at any meeting shall, unless the Court otherwise orders, be valid notwithstanding that any creditor has not received the notice sent to him.

Proof of issue  
of notice.

6. A certificate of the official assignee that the notice of any meeting has been duly given shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Costs of  
meeting.

7. Where on the request of creditors the official assignee summons a meeting, there shall be deposited with the written request the sum of five rupees for every twenty creditors for the costs of summoning the meeting, including all disbursements: Provided that the official assignee may require such further sum to be deposited as in his opinion shall be sufficient to cover the costs and expenses of the meeting.

Chairman.  
Right to  
vote.

8. The official assignee shall be the chairman of any meeting.

9. A creditor shall not be entitled to vote at a meeting unless he has duly proved a debt provable in insolvency to be due to him from the insolvent, and the proof has been duly lodged one clear day before the time appointed for the meeting.

*(The First Schedule.—Meetings of Creditors.)*

10. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. No vote in respect of certain debts.
11. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence. Secured creditor.
12. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the insolvent is liable, such bill of exchange, note, instrument or security must, subject to any special order of the Court made to the contrary, be produced to the official assignee before the proof can be admitted for voting. Proof in respect of negotiable instruments.
13. It shall be competent to the official assignee, within twenty-eight days after a proof estimating the value of a security has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally, on payment of the value so estimated. Power to require creditor to give up security.
14. If one partner in a firm is adjudged insolvent, any creditor to whom that partner is indebted jointly with the other partners in the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors and shall be entitled to vote thereat. Proof by partner.
15. The official assignee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained. Power of official assignee to admit or reject proof.
16. A creditor may vote either in person or by proxy. Proxy.
17. Every instrument of proxy shall be in the prescribed form and shall be issued by the official assignee. Instrument of proxy.
18. A creditor may give a general proxy to his attorney or to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor. General proxy.
19. A proxy shall not be used unless it is deposited with the official assignee one clear day before the time appointed for the meeting at which it is to be used. Proxy to be deposited one day before date of meeting.

(*The First Schedule.—Meetings of Creditors. The Second Schedule.—Proof of Debts.*)

Official assignee as proxy.

Adjournment of meeting.

Minute of proceedings.

20 A creditor may appoint the official assignee to act as his proxy.

21. The official assignee may adjourn the meeting from time to time and from place to place, and no notice of the adjournment shall be necessary.

22. The official assignee shall draw up a minute of the proceedings at the meeting and shall sign the same.

## THE SECOND SCHEDULE.

(*See section 48.*)

### PROOF OF DEBTS.

#### *Proofs in ordinary cases.*

Time for lodging proof.

1. Every creditor shall lodge the proof of his debt as soon as may be after the making of an order of adjudication.

Mode of lodging proof.

2. A proof may be lodged by delivering or sending by post in a registered letter to the official assignee an affidavit verifying the debt.

Authority to make affidavit.

3. The affidavit may be made by the creditor himself or by some person authorized by or on behalf of the creditor. If made by a person so authorized, it shall state his authority and means of knowledge.

Contents of affidavit.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee may at any time call for the production of the vouchers.

Affidavit to state if creditor holds security.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

Cost of proving debts.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

Right to see and examine proof.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

Deduction to be made from proof.

8. A creditor in lodging his proofs shall deduct from his debt all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

#### *Proof by secured creditors.*

Proof where security realized.

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

Proof where security is surrendered.

10. If a secured creditor surrenders his security to the official assignee for the general benefit of the creditors, he may prove for his whole debt.

## (The Second Schedule.—Proof of Debts.)

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed

Proof in other cases.

12. (1) Where a security is so valued the official assignee may at any time redeem it on payment to the creditor of the assessed value

Valuation of security.

(2) If the official assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the official assignee on behalf of the estate, may bid or purchase :

Provided that the creditor may at any time, by notice in writing, require the official assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the official assignee shall allow the amendment without application to the Court.

Amendment of valuation.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Refund of excess received.

*(The Second Schedule.—Proof of Debts.)*

Amendment  
where security  
subsequently  
realized.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

Exclusion  
from sharing  
in dividend.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

Limit of  
receipt.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Inquiry into  
mortgage, etc.

*Taking Accounts of Property Mortgaged, and of the Sale thereof.*

18. Upon application by any person claiming to be a mortgagee of any part of the insolvent's real or leasehold estate and whether such mortgage is by deed or otherwise, and whether the same is of a legal or equitable nature, or upon application by the official assignee with the consent of such person claiming to be a mortgagee as aforesaid, the Court shall proceed to inquire whether such person is such mortgagee, and for what consideration and under what circumstances; and if it is found that such person is such mortgagee, and if no sufficient objection appears to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends, interest or other proceeds received by such person or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court thinks fit, when and where, and by whom and in what way the said premises or property, or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the official assignee (unless it is otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

Conveyance.

19. All proper parties shall join in the conveyance to the purchaser, as the Court directs.

Proceeds of  
sale.

20. The monies to arise from such sale shall be applied, in the first place, in payment of the costs, charges and expenses of and occasioned by the application to the Court, and of such sale and the commission (if any)

*(The Second Schedule.—Proof of Debts.)*

of the official assignee, and in the next place in payment and satisfaction, so far as the same extend, of what shall be found due to such mortgagee, for principal, interest and costs, and the surplus of the sale monies (if any) shall then be paid to the official assignee. But if the monies to arise from such sale are insufficient to pay and satisfy what is so found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court thinks fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the insolvent as the Court directs.

Proceedings  
on inquiry.

*Periodical payments.*

22. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Periodical  
payments.

*Interest.*

23. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum —

Interest.

(a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved in insolvency includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive



(*The Second Schedule.—Proof of Debts. The Third Schedule.—Enactments repealed.*)

out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

*Debt payable at a future time.*

Debt payable  
in future.

24. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

*Admission or rejection of proofs.*

Admission or  
rejection of  
proof.

25. The official assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

Court may  
expunge  
proof im-  
properly  
received.

26. If the official assignee thinks that a proof has been improperly admitted, the Court may, on the application of the official assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Power for  
Court to  
expunge or  
reduce proof.

27. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee declines to interfere in the matter, or in the case of a composition or a scheme upon the application of the insolvent.

### THE THIRD SCHEDULE.

(*See section 127.*)

#### ENACTMENTS REPEALED.

Year.	No.	Short-title.	Extent of repeal.
<i>I.—Statute.</i>			
1848	11 & 12 Vict., c. 21.	The Indian Insolvency Act, 1848.	So much as has not been repealed.

Coll. Stats., Vol. I.

(The Third Schedule.—Enactments repealed.)

## THE THIRD SCHEDULE—continued.

(See section 127.)

## ENACTMENTS REPEALED—continued.

Year.	No.	Short title.	Extent of repeal.
<i>II.—Acts of the Governor General in Council.</i>			
<sup>1</sup> 1841	XXVII	The Insolvent Estates (Un-claimed Dividends) Act, 1841.	So much as has not been repealed.
<sup>2</sup> 1898	X	The Indian Insolvency Rules Act, 1898.	Sections 2 and 3.
<sup>3</sup> 1900	VI	The Lower Burma Courts Act.	Section 8, sub-section (1), clause (d), and sub-section (2); and in section 17, in sub-section (1) the words "an official assignee", and in sub-sections (2) and (1) the words "official assignee."
<sup>4</sup> 1908	V	The Code of Civil Procedure, 1908.	Section 120, sub-section (2).

<sup>1</sup> Genl. Acts, Vol. I.<sup>2</sup> Genl. Acts, Vol. V.<sup>3</sup> Bur. Code.<sup>4</sup> *Supra*.

ACT No. IV OF 1909.<sup>1</sup>[ 22<sup>nd</sup> March, 1909.]

An Act to consolidate and amend the law relating to the punishment of whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping ; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Whipping Act, 1909 ; and

(2) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas.

Whipping added to punishments described in Act XLV, 1860  
Offences punishable with whipping in lieu of other punishment.

2. In addition to the punishments described in section 53 of the <sup>2</sup> Indian Penal Code, offenders are also liable to the punishment of whipping.

3. Whoever commits any of the following offences, namely :—

- (a) theft, as defined in section 378 of the <sup>2</sup> Indian Penal Code other than theft by a clerk or servant of property in possession of his master ;
- (b) theft in a building, tent or vessel, as defined in section 380 of the said Code ;
- (c) theft after preparation for causing death or hurt, as defined in section 382 of the said Code ;
- (d) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section ;
- (e) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section ;

may be punished with whipping in lieu of any punishment to which he may for such offence be liable under the said Code.

4. Whoever—

- (a) abets, commits or attempts to commit, rape, as defined in section 375 of the <sup>2</sup> Indian Penal Code ;

Offences punishable with whipping in lieu of or in addition to other punishment.

LV of 1860.

<sup>1</sup> For Statement of Objects and Reasons, *see* Gazette of India, 1908, Pt V, p. 222, for Report of Select Committee, *see* *ibid*, 1909, Pt V, p. 47, and for Proceedings in Council, *see* *ibid*, 1908, Pt. VI, p. 19 and *ibid*, 1909, Pt. VI, pp. 14, 18 and .

<sup>2</sup> Genl. Acts, Vol. I.

(b) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code ;

(c) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of the said Code ;

(d) commits dacoity as defined in section 391 of the said Code ;

may be punished with whipping in lieu of or in addition to any other punishment to which he may for such offence, abetment or attempt be liable under the said Code

5. Any juvenile offender who abets, commits or attempts to commit —

Juvenile offenders when punishable with whipping.

- (a) any offence punishable under the <sup>1</sup> Indian Penal Code, except offences specified in Chapter VI and in sections 153A and 505 of that Code and offences punishable with death, or
- (b) any offence punishable under any other law with imprisonment which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf,

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable.

*Explanation.*—In this section the expression “ juvenile offender ” means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

6. Whenever any Local Government has, by notification in the official Gazette, declared the provisions of this section to be in force in any frontier, district or any wild tract of country within the jurisdiction of such Local Government, any person who in such district or tract of country after such notification as aforesaid commits any offence punishable under the <sup>1</sup> Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

Special provision as to punishment with whipping in frontier districts.

7. To section 392, sub-section (2), of the <sup>1</sup> Code of Criminal Procedure, 1898, the words “ and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes ” shall be added.

Amendment of section 392, Act V, 1898.

8. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeals.

<sup>1</sup> Genl. Acts, Vols. I and V, respectively.

## THE SCHEDULE.

(See section 8.)

## ENACTMENTS REPEALED.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
<i>Acts of the Governor General in Council.</i>			
1864 <sup>1</sup>	VI	The Whipping Act, 1864.	So much as is unrepealed.
1895	III	The Indian Criminal Law Amendment Act, 1895.	Section 5.
1898	V	The Code of Criminal Procedure, 1898.	The words "whipping (if specially empowered)" in sub-section (1) and sub-section (3) of section 32.  The words and figures "(1) Power to pass sentences of whipping, section 32" under the heading "Powers with which a Magistrate of the second class may be invested" in Schedule IV.
1898	XIII	The Burma Laws Act, 1898.	Section 4, sub-section (3), clause (b), and the Second Schedule.
1900	V	The Whipping Act, 1900.	The whole Act.

<sup>1</sup> Genl. Acts, Vols. IV and V, respectively.<sup>2</sup> Bur Code.

ACT No. V OF 1909.<sup>1</sup>

[22nd March, 1909.]

An Act to amend certain enactments relating to the Army.

WHEREAS it is expedient to amend certain enactments relating to the Army in manner hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Amending (Army) Act, 1909. Short title.
2. The enactments specified in the Schedule are hereby amended to the extent and in the manner mentioned in the fourth column thereof. Amendment of enactments in Schedule.

## THE SCHEDULE.

1	2	3	4
Year.	No.	Short title.	Amendments.
<i>Acts of the Governor General in Council.</i>			
1869	XV	The Indian Volunteers' Act, 1869	<p>After section 7 insert the following :—</p> <p>“7-A (1) The Commanding Officer of a Volunteer Corps may strike off the rolls any volunteer, not being an officer of the Corps under his command, who has been absent without leave for not less than six months, or has quitted the Corps otherwise than in accordance with section 13, or has been classed as non-efficient for two consecutive years.</p> <p>(2) Every volunteer so struck off the rolls shall be deemed to have been removed from the Corps”</p> <p>In section 15, insert the words “removal or” before the words “dismissal therefrom”.</p>
1877	XI	The Military Lunatics Act, 1877.	<p>For section 3 substitute the following :—</p> <p>“3 Whenever a European officer, warrant officer, non-commissioned officer, soldier or other person subject to the provisions of the Army Act has been declared a lunatic in accordance with the provisions of the military regulations in force for the time being, and it appears to any administrative medical officer that it is inexpedient that he should be removed to England or that he should be detained in military custody until he can be conveniently sent to England, such administrative medical officer may, if he thinks fit, make an order under his hand for the reception of the said lunatic into any lunatic asylum which has been duly authorized for the purpose by the Governor General in Council;</p>

<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1909, Pt. V, p. 53, and for Proceedings in Council, see *ibid.*, 1909, Pt. VI, pp. 28 and 24

<sup>2</sup> Genl. Acts, Vol. II.

THE SCHEDULE—*contd.*

1	2	3	4
Year.	No.	Short title.	Amendments.
<i>Acts of the Governor General in Council—contd.</i>			
1877	XI— <i>contd.</i>	The Military Lunatics Act, 1877— <i>contd.</i>	and the officer in charge of such asylum shall receive the lunatic into the asylum, and detain him therein until he is discharged therefrom, in accordance with the military regulations in force for the time being or until such administrative medical officer applies for his transfer to the military authorities in view to his removal to England."
			In section 7, for the words "General Officer Commanding the district or force" substitute the words "General or other officer commanding the division, district, brigade or force," and omit the word "other" before the words "officer authorized."
<sup>1</sup> 1889	XIII	The Cantonments Act, 1889.	In section 13, for the words "European soldier, or to or for the use of any European or Eurasian being a follower or a soldier's wife" substitute the words "soldier, or follower, or soldier's wife."
			In section 15, sub-section (1), after the words "police-officer" insert the words "or excise-officer."
<sup>1</sup> 1902	II	The Cantonments (House Accommodation) Act, 1902.	In section 2, sub-section (1),—  for clauses (b) and (c) substitute the following:—  "(b) 'Division' means one of the Divisions into which the Army in India is, for the time being, divided, and includes the Bannu, Derajat and Kohat Independent Brigades.  "(c) 'Officer Commanding the Division' means the Officer Commanding a Division, and includes the Officers Commanding the Bannu, Derajat and Kohat Brigades";  in clause (e), for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."
			In section 10, sub-section (1), for the words "General Officers of the Command" substitute the words "Officer Commanding the Division."
			In section 11, clause (d), for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."

<sup>1</sup> Genl. Acts, Vols. IV and V, respectively.

THE SCHEDULE—*concl'd.*

1	2	3	4
Year.	No.	Short title	Amendment.
<i>Acts of the Governor General in Council—concl'd.</i>			
1902	II— <i>cont'd.</i>	The Cantonments (House Accommodation) Act, 1902— <i>cont'd</i>	<p>In section 15, sub-section (1), for the word "District" substitute the word "Division."</p> <p>In section 35, sub-section (1), for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."</p> <p>In section 36, sub-sections (2) and (3), for the words "General Officer of the Command," wherever they occur, substitute the words "Officer Commanding the Division."</p> <p>In section 37, for the words "General Officer of the Command" substitute the words "Officer Commanding the Division."</p> <p>In section 39, sub-sections (2), (3) and (4), for the word "District" substitute the word "Division."</p>
<sup>1</sup> 1903	VII	The Indian Works of Defence Act, 1903.	<p>In section 2, for clauses (c) and (d) substitute the following :—</p> <p>"(c) The expression 'Division' means one of the Divisions into which the Army in India is, for the time being, divided, and includes the Bannu, Derajat and Kohat Independent Brigades :</p> <p>"(d) The expression 'General Officer Commanding the Division' means the General Officer Commanding a Division, and includes the General Officers Commanding the Bannu, Derajat and Kohat Brigades."</p> <p>In section 7—</p> <p>(1) in clause (a), sub-clauses (i) and (iv), and clause (b), sub-clauses (i) and (ii), for the words "General Officer of the Command" substitute the words "General Officer Commanding the Division";</p> <p>(2) in clause (a), sub-clause (ii), and clause (b), sub-clause (i), for the word "District" substitute the words "Division, District and Brigade."</p>

<sup>1</sup> Genl. Acts, Vol. V.





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